

Document No. 4446

SALE AND CONSTRUCTION AGREEMENT
among
CITY OF BOSTON,
BOSTON REDEVELOPMENT AUTHORITY
and
FORT HILL SQUARE ASSOCIATES

May 30, 1984

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SALE AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this 30th day of May, 1984, among the CITY OF BOSTON, acting by and through the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, acting pursuant to authority delegated by and in accordance with the PFC votes, the Real Property Board votes, and the City Council vote, the BOSTON REDEVELOPMENT AUTHORITY acting in its own behalf, and FORT HILL SQUARE ASSOCIATES, a Massachusetts general partnership of which the present general partners are BC ASSOCIATES, a Massachusetts limited partnership and FORT HILL LAND COMPANY, a Delaware corporation.

The parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

a. "Architect" shall mean the firm of John Burgee Architects with Philip Johnson or such other firm as shall be substituted by the Developer with the prior written consent of the Authority.

b. "Authority" shall mean the Boston Redevelopment Authority.

c. "Change Order" shall mean any request for approval by the Authority, together with such approval, of a change to or modification or amendment of the Final Plans and Specifications or of the completed Improvements if the same would or might materially change the external appearance of the Improvements or any elements thereof open to public view or access including, without limitation, elements such as public lobbies, arcades, open spaces or landscaping.

d. "Certificate of Completion" shall mean the instrument or certification required of the Authority under Section 304.

e. "City" shall mean the City of Boston, Massachusetts, acting by and through its Public Facilities Commission.

f. "City Council Vote" shall mean the vote of the City Council of the City of Boston taken at a meeting held on November 23, 1983 and approved by the Mayor on December 16, 1983, a copy of which is attached hereto as Exhibit A and made a part hereof.

g. "Closing Dates" shall mean the dates established in Sections 203 and 204 of this Agreement as the dates for the sale and conveyance of the Property to the Developer. "Parcel A Closing Date" shall be the Closing Date for Parcel A and "Parcel B Closing Date" shall be the Closing Date for Parcel B.

h. "Construction Commencement Date" means 6 months after the Parcel A Closing for Phase 1; and, for Phase 2, eight years after the Parcel A Closing. If and to the extent that, from time to time, Developer demonstrates that it is unable, for reasons beyond its control (which may include, without limitation, unfavorable financing, leasing or construction markets and inability to obtain governmental approvals, permits, variances, licenses and the like), to begin construction of a Phase on or before the applicable Construction Commencement Date, the Authority shall, from time to time, extend the Construction Commencement Date for Phase 2 for a period, which is reasonable under the circumstances, not to exceed 24 months in the aggregate, unless the Authority reasonably determines that Developer would, at such extended date, lack the capacity to commence construction of the Phase in question or to prosecute such construction to completion.

i. "Contractor" shall mean such general contractor or construction manager as may be selected by the Developer for each Phase, with the prior written consent of the Authority.

j. "Covenant Expiration Date" shall mean the date, ascertained separately for each of Phase 1 and Phase 2, which is the twentieth anniversary of the date of the Certificate of Completion for the Phase in question.

k. "Deeds" shall mean the instruments, to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Property is conveyed to the Developer. "Parcel A Deed" shall be the Deed for Parcel A and "Parcel B Deed" shall be the Deed for Parcel B.

l. "Design Documentation" shall mean the several stages of documentation outlined in Section 302 which are to be prepared for the Developer by or through the Architect and to be submitted for approval by the Authority pursuant to the Design Review Procedure.

m. "Design Review Procedure" shall mean the procedures, set forth in Exhibit B attached hereto and made a part hereof, to be followed by the Developer in obtaining all approvals required hereunder of the Design Documentation.

n. "Designation Conditions" shall mean the terms and conditions for the making by the Authority of the Tentative Designation, such conditions being set forth in a document dated October 20, 1983, entitled "Terms and Conditions for Tentative Developer Designation Fort Hill Square Garage Parcels", which is made a part hereof and attached hereto as Exhibit C, as the same

have been elaborated and clarified in the Authority's Schematic Design Approval referred to in Section 302(c) and the petitions by the Developer dated April 13, 1984, to the Board of Appeal of the City of Boston for variances and conditional use permits for the Project Site (which petitions the Authority hereby approves as to form and content, it being understood that the relief requested by the petitions may be granted by the Board of Appeal of the City of Boston only).

o. "Developer" shall mean Fort Hill Square Associates and only such of its successors and assigns in legal or beneficial interest to the Property and the Improvements as shall expressly be allowed hereunder.

p. "High Street Ramp" shall mean the existing highway ramp providing egress from the Central Artery to High Street.

q. "Improvements" shall mean all structures and amenities to be made or created by the Developer on or to the Property and Private Land pursuant to the approved Design Documentation and any Change Order. The "Phase 1 Improvements" and "Phase 2 Improvements" are described in Section 301 hereof.

r. "PFC Votes" shall mean those votes of the City of Boston, Public Facilities Commission, taken at meetings held on October 21, 1983 and December 12, 1983, the same being set forth at length in certificates of Lori B. Golden, Secretary of the Public

Facilities Commission, copies of which certificates are attached hereto as Exhibit D and made a part hereof.

s. "Private Land" shall mean the land situated in Boston, Massachusetts, as described in Exhibit E attached hereto and made a part hereof.

t. "Project Site" shall mean the Property and the Private Land. The Project Site has been or will be divided into the Phase 1 Site and Phase 2 Site, as each is described on Exhibit F attached hereto and made a part hereof.

u. "Property" shall mean the land and all improvements presently thereon situated in Boston, Massachusetts, as described in Exhibit G attached hereto and made a part hereof. The Property consists of Parcel A and Parcel B as described in Exhibit G.

v. "Real Property Board Votes" shall mean those votes of the City of Boston, Real Property Board, taken at a meeting held on October 21, 1983, the same being set forth at length in a Certificate of Richard Carter, Executive Secretary of the Real Property Board, a copy of which certificate is attached hereto as Exhibit H and made a part hereof.

w. "Tentative Designation" shall mean the vote of the Authority taken at a meeting held on October 20, 1983 in which a tentative designation was made of the Developer as the prospective

purchaser and redeveloper of the Property, the same being set forth at length in a certificate of Kane Simonian, Secretary of the Authority, a copy of which is attached hereto as Exhibit I and made a part hereof.

x. "Variance Date" means the date on which all variances and conditional use permits requested by Developer in its petition, dated April 13, 1984 to the Board of Appeal of the City of Boston have been granted either by the Boston Board of Appeal or by a court of competent jurisdiction upon appeal by Developer from an adverse decision provided no appeal or challenge by a third party thereafter occurs. If an appeal or challenge thereafter occurs, "Variance Date" means the date on which all such appeals or challenges have been resolved to the reasonable satisfaction of Developer and the Authority. (See Section 204)

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale.

Subject to all of the terms, covenants and conditions of this Agreement, the City and the Authority agree to sell and convey and the Developer covenants and agrees to purchase the Property.

Section 202: Condition of Property to be Conveyed.

The City, the Authority and the Developer agree that the Property shall be conveyed "as is", in the condition in which it exists at the time of delivery of the particular Deed, free of all tenants or occupants including, without limitation, any garage operator heretofore operating the garage on the Property. Without limitation, it is agreed that neither the City nor the Authority shall have any obligation to maintain any existing improvements on the Property between the date of this Agreement and the Closing Date and that the Developer bears all risk of loss or damage to such improvements.

Section 203: Purchase Price and Payment Therefor.

The purchase price for the Property shall be Twenty-five Million and 00/100 Dollars (\$25,000,000.00) of which One Hundred Thousand and 00/100 Dollars (\$100,000.00) has been heretofore paid to the Authority as a deposit. Such deposit shall be held by the Authority, and shall be disposed of in accordance with provisions hereinafter contained. The Authority shall have no obligation to invest the deposit, but any interest earned on the deposit shall be solely for the account of the Authority. The balance of the purchase price shall be paid as follows:

- a. \$20,900,000 shall be paid on the Parcel A Closing Date by certified or bank check drawn on good Boston funds payable directly to the order of the Authority.
- b. \$4,000,000 shall be paid on the Parcel B Closing Date by certified or bank check drawn on good Boston funds payable directly to the order of the Authority. The Parcel B Closing Date shall be on the first to occur of the following, provided that the Parcel A Closing Date has theretofore occurred:

- i) the completion of demolition of the High Street Ramp, or
- ii) the issuance of a Certificate of Completion with respect to the Phase 1 Improvements, or
- iii) December 31, 1986.

Section 204: Time of Sale and Conveyance

If the Developer shall then have satisfied the conditions precedent to delivery of the Parcel A Deed set forth in this Agreement, the sale and conveyance and delivery of possession of Parcel A and the purchase of the same by the Developer shall take place on the Parcel A Closing Date at the office of the Public Facilities Department of the City at 26 Court Street, 6th Floor,

Boston, Massachusetts, or at such other place as the Authority may designate. The Parcel A Closing Date shall be the later to occur of (i) June 30, 1984 or (ii) the Variance Date. Developer may, at its sole election, extend the Parcel A Closing Date through December 31, 1984 by payment to the Authority of an additional \$100,000 deposit, such payment to be made no later than the later to occur of (a) 15 days after the Variance Date or (b) July 15, 1984. Such additional deposit shall be credited toward the amount to be paid by Developer at the Parcel A Closing, with the result that the amount to be paid under Section 203(a) at the Parcel A Closing Date shall be \$20,800,000. Developer may, at its sole election, extend (or further extend, if applicable) the Parcel A Closing Date through June 30, 1985 by payment to the Authority of an additional \$100,000 deposit, such payment to be made no later than the later to occur of (a) 15 days after the Variance Date or (b) January 15, 1985. Such additional deposit may be utilized or spent by the Authority for any purpose, in its sole discretion, and shall not be credited toward the amount to be paid by the Developer at the Parcel A Closing. If the Variance Date occurs on or before August 31, 1984, Developer will use reasonable efforts in endeavoring to cause the Parcel A Closing to occur on or before August 31, 1984, it being understood that failure to arrange financing or other good faith failure to close by such date shall not be considered a breach by Developer hereunder.

If neither the Variance Date nor the Parcel A Closing has occurred by June 30, 1985, then either party may, at any time

thereafter, and prior to the Parcel A Closing, elect that this Agreement shall terminate whereupon this Agreement shall be null and void and without recourse to the parties and the original \$100,000 deposit plus the first additional \$100,000 deposit but not any second additional \$100,000 deposit shall be repaid to the Developer without interest.

If a decision of the Boston Board of Appeal (or of a court) results in the Developer obtaining less than all variances and conditional use permits requested by the Developer in its petition described above, and any rights of Developer to appeal expire, the Developer shall have until 60 days after the date of the unappealed decision in question to elect to treat the date 60 days after such decision date as the Variance Date. Failure so to elect in writing shall be deemed an election by the Developer to terminate this Agreement, whereupon this Agreement shall be void and without recourse to the parties and the original \$100,000 deposit plus the first additional \$100,000 deposit but not any second additional \$100,000 deposit shall be repaid to the Developer without interest.

The Developer may, at any time, in its sole discretion, accelerate either of the Parcel A Closing Date or the Parcel B Closing Date by at least 10 days notice to the Authority. In so doing the Developer may waive any conditions of the closing which

benefit the Developer including, without limitation, the occurrence of the Variance Date.

Simultaneously with delivery of the Parcel A Deed, the Authority and City shall make a final designation of Developer as the Developer of the Property in accordance with its usual procedures.

The sale and conveyance and delivery of possession of Parcel B and the purchase of the same by Developer shall take place on the Parcel B Closing Date at the office of the Public Facilities Department of the City at 26 Court Street, 6th Floor, Boston, Massachusetts, or at such other place as the Authority may designate.

Section 205: Title and Instrument of Conveyance.

The sale and conveyance of the Property shall be by Quitclaim Deeds conveying fee simple title to the Property subject only to the terms and conditions of this Agreement and to all liens, encumbrances, easements and restrictions existing at the date thereof, provided however that any liens, encumbrances, easements, restrictions or the like hereafter arising shall not affect either the use or development of the Project Site, or any part thereof, as contemplated hereunder, or the value of the Property.

At the Parcel A Closing, but not before, this Agreement shall be recorded at the Suffolk Registry of Deeds immediately prior to the Parcel A Deed. It shall be a condition precedent of the Parcel A Closing that the holders of any mortgages on the Private Land, or parts thereof, which mortgages remain outstanding after the Parcel A Closing, agree of record that this Agreement shall take effect with respect to the Private Land as though executed, acknowledged, delivered and recorded prior to such mortgages.

Section 206: Federal Tax Stamps and Other Closing Costs.

The Developer shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed. It is understood and agreed by the parties hereto that this Agreement shall not be recorded prior to the recording of the Deed.

Section 207: Adjustments.

The City shall pay all operating costs of the Property (Parcel A or Parcel B) allocable with respect to any period before delivery of each of the Deeds hereunder. The Developer shall pay all operating costs of the Property (Parcel A or Parcel B) allocable with respect to any period after delivery of each of the Deeds hereunder. Simultaneously with delivery of each of the Deeds, the Developer shall pay to the City sewer and water charges

and assessments allocable to the Parcel in question with respect to any period after delivery of the Deed, together with a payment in lieu of taxes allocable to the days ensuing in the fiscal year after the date of the Deeds computed in accordance with Section 63A of Chapter 44 of the General Laws of Massachusetts.

Section 208: Default by Authority re: Conveyance.

In the event that the Authority shall be unable to make conveyance or to deliver possession of either Parcel A or Parcel B as provided herein, the Authority shall use reasonable efforts (but without obligation to expend more than \$50,000 towards such efforts) to make conveyance or to deliver possession as herein agreed, as the case may be, in which event the Authority shall give written notice thereof to the Developer at or before the Closing Date in question, and thereupon the time for the performance by the Authority shall be extended for a period of ninety (90) days, or such longer period as the Authority and the Developer shall mutually agree; provided however, that the Developer shall have the election, either at the original or any extended time for performance, to accept such title and possession as the Authority can deliver to the Parcel in question and to pay therefor the purchase price without deduction, in which case the Authority shall go forward with the closing. In the event that at the expiration of the extended time the Authority shall be unable to make conveyance or to deliver possession as herein provided, then, (A) in the case of Parcel A the deposit shall be refunded,

all obligations of the parties hereto shall cease, and this Agreement shall be void and the parties shall have no further recourse to each other hereunder and (B) in the case of Parcel B, the obligations of the parties shall cease and this Agreement shall be modified to adjust the rights and obligations of the parties accordingly. In no event shall the Developer be entitled to acquire less than all or so much of Parcel A or Parcel B as is tendered by the Authority.

Section 209. Default by Developer prior to Delivery of Deed.

In the event that prior to delivery of the Parcel A Deed the Developer shall default in its obligations hereunder and shall be unable to correct such default within 180 days of notice thereof, then the Authority may, at its election, by notice to Developer given on or prior to the Parcel A Closing Date (as the same may be extended hereunder):

a. terminate this Agreement and all rights of Developer hereunder and retain the deposit as liquidated damages, or

b. advise the Developer that it shall apply the deposit towards damages incurred on account of such default, in which case the deposit shall be so applied and the Authority shall also have the right to seek additional damages against the Developer for its

obligations hereunder, provided that the aggregate liability of Developer hereunder shall in no event exceed one million dollars.

If such a default so occurs and remains uncorrected prior to the delivery of the Parcel B Deed then the Authority may, at its election, by notice to Developer given on or prior to the Parcel B Closing Date (as it may be extended hereunder) terminate this Agreement as it relates to Parcel B and the Agreement shall be modified accordingly. Under no circumstances may Developer acquire Parcel B unless and until it acquires Parcel A hereunder nor shall Developer be entitled to acquire Parcel B if a material Event of Default has occurred and is continuing hereunder on the Parcel B Closing Date.

ARTICLE III

RESTRICTIONS AND CONTROLS UPON DEVELOPMENT

Section 301: Restrictions on Use; Signage

a. The Improvements to be constructed on the Project site (including the Property) shall contain approximately 1,700,000 square feet of office space, approximately 100,000 square feet of retail space, and a below-grade parking facility with not less than 792 parking spaces (which shall include at least 660 public parking spaces), all to be located on approximately 115,300 square feet of land for an overall project FAR of 16. The Improvements

will be constructed in two phases. Phase 1 will consist of a 46-story cylindrical high-rise tower augmented by two lower rectangular elements of 19 and 27 stories with a total of approximately 1,113,300 square feet of gross floor area located on approximately 44,419 square feet of land for an FAR of 25.1. Phase 2 will consist of a 35-story cylindrical high-rise tower, a connected rectangular element of 2 stories, and a glass-enclosed courtyard with a total of approximately 731,500 square feet of gross floor area located on approximately 70,882 square feet of land for an FAR of 10.3. As shown on the approved schematic design referred to in Section 302(c), a portion of Phase 2 will be constructed contemporaneously with Phase 1, which portion shall consist of an approximately 10,700 square foot glass-enclosed courtyard, and contemporaneously with the completion of construction of the Phase 1 Improvements and prior to the commencement of construction of the remainder of the Phase 2 Improvements the unimproved portion of the Phase 2 site will be maintained as a landscaped public open space. Substantial completion of such contemporaneous construction and landscaping shall be a condition of the granting of a Certificate of Completion for the Phase 1 Improvements pursuant to Section 304 hereof.

b. No freestanding sign shall be erected on the Property without the consent of the Authority. No sign shall be erected or placed on the exterior of any Improvements, nor on any portion of any Improvement which is not enclosed within a building and not

visible to the public from the outside of any Improvement, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the Authority in writing. Without limiting in any way the scope of the Authority's review, no sign shall be approved which does not meet the following standards: Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual use. No signs will be permitted on awnings or marquees, if any, nor on projections, if any, over the sidewalk. All signs shall be belt type. Flashing, illuminated signs, exposed neon signs or signs other than those relating to businesses on the site, if any, shall not be permitted.

c. The covenants in subsections (a) and (b) of this Section 301 and those in Articles IV, VI, and XII shall be covenants running with the land and shall terminate with regard to each of the Phase 1 Site and the Phase 2 Site on the Covenant Expiration Date for the Phase in question.

Section 302: Improvements and Submission of Plans.

a. The Design Review Procedure sets forth the formal stages of submissions and approvals for the Design Documentation relating to the Improvements. All aspects of the Design Documentation shall conform to the Designation Conditions and refinements thereof hereafter imposed by the Authority. The several phases of the Design Documentation are the Schematic Design, the Design Development, and the Final Plans and Specifications. In the event

that any provision of the Design Review Procedure shall be inconsistent with any provision of this Agreement, then this Agreement shall prevail over such inconsistent provision.

Notwithstanding the time periods for approvals of various stages of the Design Documentation set out below, Developer shall submit Final Plans and Specifications for Phase 1 Improvements and Phase 2 Improvements which meet the requirements of Section 302(f) and receive the approval of the Authority by the Phase 1 Construction Commencement Date and Phase 2 Construction Commencement Date respectively.

b. It is the general policy of the Authority that all new buildings shall be designed and constructed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Developer's obligation to comply with all legal requirements applicable thereto, the Design Documentation (including the Final Plans and Specifications) shall include provisions conforming insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which specifications, as amended from time to time, are hereby incorporated herein by reference. The Authority shall take into consideration the provisions and objectives of such specifications in its review of and action upon the Design Documentation (including Final Plans and Specifications).

c. The Authority hereby acknowledges its receipt and approval of the "International Place Schematic Design Submission" for Phase 1 and Phase 2, dated March 19, 1984 (including additional plans and written descriptions dated April 2, 1984 and April 4, 1984), which Schematic Design Submission fulfills the requirements established for both Phase 1 and Phase 2 by the Design Review Procedure, subject to the outstanding public conditions to be resolved as noted in the Authority's letter of approval dated April 5, 1984 (as thereafter supplemented). Such letter (as supplemented) is attached as Exhibit J.

The Authority's approval of the Schematic Design for Phase 2 contemplates the removal of the High Street Ramp. If the Ramp is not removed prior to the commencement of construction for Phase 2, a revised schematic design for Phase 2 must be submitted by the Developer for approval by the Authority. In the event that revision of the Phase 2 design is required because the Ramp has not been removed, the land area located under the High Street Ramp shall not be deducted from the area of the Project site for the purposes of calculating the approved FAR of 16 (provided that Developer has taken title to such land pursuant to the terms of this agreement). However, the Authority may seek, in the course of its review and approval, to reconfigure the massing of the Phase 2 building components while maintaining insofar as possible the public amenities and floor area of Phase 2 as now approved.

d. Within thirty (30) days after the date hereof Developer shall submit to the Authority the Design Development for the Phase 1 Improvements as described in the Design Review Procedure. The Authority shall review the Design Development for conformity with the approved Schematic Design and this Agreement and shall, within fifteen (15) days after receipt thereof, either approve the Design Development as conforming with the approved Schematic Design and this Agreement or notify Developer in writing of disapproval, specifying the respects in which the Design Development does not conform with the approved Schematic Design and this Agreement.

In the event of a disapproval, Developer shall, within fifteen (15) days after Developer receives the written notice of such disapproval, resubmit the Design Development altered so as to conform to the approved Schematic Design and this Agreement in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of the Design Development or any correction thereof, as the case may be, such Design Development or corrected Design Development shall be deemed approved.

e. (Deleted)

f. Within thirty (30) days after the Authority has approved or has been deemed to approve the Design Development, Developer shall submit to the Authority the Final Plans and Specifications for the Phase 1 Improvements as described in the Design Review Procedure. The Authority shall review the Final Plans and Specifications for conformity with the approved Design Development and this Agreement and shall, within fifteen (15) days after receipt thereof, either approve the Final Plans and Specifications as conforming with the approved Design Development and this Agreement or notify Developer in writing of disapproval, specifying the respects in which the Final Plans and Specifications do not conform to the approved Design Development and this Agreement.

In the event of a disapproval, Developer shall, within fifteen (15) days after Developer receives the written notice of such disapproval, resubmit the Final Plans and Specifications altered so as to conform to the approved Design Development and this Agreement in those respects specified by the Authority as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Authority in accordance with the procedure hereinabove provided for an original submission, until the Final Plans and Specifications shall be approved by the Authority.

If Developer receives no notification from the Authority of such disapproval within fifteen (15) days after submission of the Final Plans and Specifications or any correction thereof, as the case may be, such Final Plans and Specifications or corrected Final Plans and Specifications shall be deemed approved.

g. The Design Review Procedure shall be repeated for the Phase 2 Improvements with Developer being required to submit to the Authority the Design Development for the Phase 2 Improvements on or before six months prior to the Phase 2 Construction Commencement Date.

h. The Design Review Procedure may incorporate and allow changes, from time to time, from the approved Schematic Design (and subsequent elaborations thereof) in order to preserve the essential rights and obligations of the parties to the extent reasonably necessitated by changes of conditions applicable to the Project Site including without limitation the failure by appropriate state governmental authorities to demolish and relocate the High Street Ramp, zoning or other legal requirements, and the like. Decisions made by the Authority after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive.

i. The Developer shall not apply for a foundation or building permit for the construction of the Improvements or any part thereof without the prior certification of the Authority that the

work to be done as set forth in the permit application is in accordance with the Final Working Drawings and Specifications approved by the Authority in accordance with the requirements of this Agreement. In its construction of the Improvements, the Developer shall insure that there is no material deviation from such Approved Final Working Drawings and Specifications in connection with the external appearance of the Improvements open to public view or access, except and only to the extent that Change Orders have been requested in writing and have been approved in writing by the Authority.

It is agreed that all Change Orders issued and implemented subsequent to approval by the Authority of Final Working Drawings and Specifications constitute a deviation from the approved Final Working Drawings and Specifications. The Developer agrees that no Change Order of any kind will be implemented unless such Change Order shall have been submitted to the Authority and shall thereafter have been approved or shall be deemed to have been approved by the Authority.

In the event the Developer shall fail to comply with the foregoing requirements in proceeding with construction or modification of all or any part of the Improvements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Developer modify or reconstruct such portion or portions of the Improvements as deviate from the approved Final Working Drawings and

Specifications or any Change Order with respect thereto in order to bring them into conformance therewith. The Developer shall promptly comply with such a directive. In addition to any other remedies available to it under law or under this Agreement, the Authority may enforce the provisions of this Section 302 by an action in a court of appropriate jurisdiction to compel specific performance.

j. Notwithstanding the foregoing, Developer may submit to the Authority plans and specifications prepared by the Architect for purposes of beginning work with respect to certain elements of a Phase which may include such site work, foundation work and other similar items which Developer proposes to begin on a "fast-track" basis. The Authority will promptly review such plans and specifications for "fast-track" construction in conjunction with its Design Review Procedure then in process, and shall approve commencement of work on specific "fast-track" construction elements which are demonstrated to the reasonable satisfaction of the Authority to be consistent with those portions of the design materials previously approved. As a condition to proceeding with construction of any "fast track" element, a copy of the "fast track" contract (if any such contract exists) and a writing complying with the requirements of Section 1101 (b) (i), to the extent such section applies to a construction contract, shall be submitted by Developer in advance to the Authority for its approval and Developer shall meet other requirements of Section 1101, as applicable. Approval of "fast track" construction

elements shall not waive the Authority's subsequent rights with respect to review and approval of all Design Materials. Any construction prior to Authority approval of the Final Plans and Specifications shall be at the sole risk of Developer with respect to costs of reasonable corrective work or additional work (which may include demolition) to conform the work to the Design Materials approved by the Authority.

Section 303: Time for Commencement and Completion of Improvements.

a. The Developer shall begin (and diligently pursue) demolition of all structures on the Project Site (except Parcel B) forthwith after delivery of the Parcel A Deed. The Authority and the City at no charge shall have the right, from the date hereof through 30 days after the Parcel A Closing Date, to remove from the existing public garage and to retain such components thereof as the Authority or the City may desire. In all events, the Developer shall begin the construction of the Phase 1 Improvements, in accordance with the approved Final Working Drawings and Specifications therefor, not later than the Phase 1 Construction Commencement Date, and shall begin the construction of the Phase 2 Improvements, in accordance with the Final Working Drawings and Specifications therefor, not later than the Phase 2 Construction Commencement Date.

b. The Developer shall diligently prosecute to completion the construction of each Phase of the Improvements and shall

substantially complete such construction within 60 months after the applicable Construction Commencement Date (subject to delays for force majeure).

c. The Developer shall submit to the Authority for its approval detailed estimated progress schedules prior to commencement of each Phase in a format generally used in the construction of buildings. This schedule shall be revised as construction proceeds from time to time, but not less frequently than monthly, and such revisions shall promptly be submitted to the Authority. This monthly submission shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts which shall be reasonably satisfactory to the Authority. Such work of the Developer shall be subject to inspection by representatives of the Authority, and the Authority shall endeavor to notify the Developer promptly of any major defects directly observed by it. Upon receipt of any such notification, the Developer shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of the Authority.

d. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the beginning and completion of the Improvements shall be covenants running with the land. This subsection shall not, however, apply against a mortgagee permitted by this Agreement unless the

mortgagee shall elect to complete as permitted in Section 503, in which case the extension provisions of that Section shall apply.

e. Prior to the sale and conveyance and delivery of possession of Parcel A or Parcel B, as the case may be, the Developer shall be permitted access thereto whenever and to the extent necessary to carry out the purposes of this Agreement, subject to existing rights of others. Developer agrees to indemnify, defend (with counsel of Developer's selection, but subject to approval of the Authority) and save harmless the City and Authority from and against all claims, costs and liabilities against the City or Authority arising directly or indirectly out of such entry on the Parcel in question by Developer.

Section 304: When Improvements Completed.

The construction of each Phase of the Improvements shall be deemed completed for the purposes of this Agreement when built substantially in accordance with the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved Change Order with respect thereto, except for (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has been taken, i.e. so-called punchlist items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions and (iii) with respect to office, retail and other tenant space, items of work normally left for completion pursuant to the requirements of specific

occupancy agreements such as construction of interior partitions and doors, distribution of electrical outlets and switches, location of ventilation ducts and returns, and placement of lighting fixtures and the installation of ceilings.

If the Authority issues a Certificate of Completion prior to completion of the work described in clauses (i), (ii) and (iii) above and any and all other work which, in the reasonable opinion of the Authority, should be completed prior to the issuance of a Certificate of Completion, then the Developer shall deposit with the Authority, or, if required by any mortgagee, with the holder of the first mortgage on the Property pursuant to an escrow or holdback agreement approved by the Authority, as security for the completion of such work an amount which, in the reasonable opinion of the Authority, would cover the cost of such completion (the Authority agrees not unreasonably to disagree with the decisions of the any mortgagee on these issues). Said deposit, if deposited with the Authority, shall be in cash, certified check, bond, letter of credit, or by other security reasonably satisfactory to the Authority. The deposit shall be delivered simultaneously with the issuance of the Certificate of Completion. If such work is not so completed to the reasonable satisfaction of the Authority, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance, except for the work described in clause (iii) above which shall be completed within a reasonable time of the leasing of each portion of such space, then the Authority may apply such deposit to

completion of such work. The Authority will act reasonably and in good faith where its rights hereunder correspond to similar rights of the mortgagee, but the Authority may act independently of the Mortgagee if in the Authority's judgment the rights of both cannot be accomodated.

Promptly after substantial completion of each Phase of the Improvements substantially in accordance with the requirements of this Agreement, the Authority will furnish the Developer with a separate Certificate of Completion for such Phase so certifying. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the relevant Deed with respect to the obligations of the Developer to construct such Phase of the Improvements, except for aspects thereof to be completed thereafter.

Developer agrees that Authority shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Agreement and the Final Working Drawings and Specifications (as modified by any Change Order approved by Authority) provided, however, that the Authority shall not be required to make an inspection hereunder unless the Developer has requested by written notice to Authority that it issue a Certificate of Completion.

The Certificate of Completion provided for in this Section shall be in such form as will enable recordation in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide such Certificate of Completion in accordance with the provisions of this Section, the Authority shall, within thirty (30) days after receipt by the Authority of a written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed substantially to complete the particular Phase Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts will be necessary, in the reasonable opinion of the Authority, for the Developer to take or perform in order to obtain such Certificate of Completion. If the Authority shall refuse or fail to provide the Developer with such a written statement within 30 days of a request therefor by the Developer, the instrument certifying substantial completion of the Phase in question shall be deemed to have been issued and the Developer shall be entitled to obtain specific performance ordering such instrument to issue.

Section 305: Prompt Payment of Obligations.

Without limiting the right of Developer to withhold payment of any monies which Developer is contesting or disputing in good faith, the Developer shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms

and corporations doing any work, furnishing any materials or Supplies or renting any equipment to the Developer or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements.

ARTICLE IV CHANGES AND ALTERATIONS

Section 401: Changes after Completion

After each Phase of the Improvements required by this Agreement to be constructed on the Project Site or any portion thereof have been completed in accordance with this Agreement and prior to the Covenant Expiration Date for the Phase in question, no person shall, without the prior written approval of the Authority, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions, or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any material way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) or other Improvements except that the restoration of the Improvements after a casualty or eminent domain taking to the condition required to

exist prior to such event shall not require approval of the Authority.

Section 402: Procedures for Changes

a. In requesting such approval or confirmation of compliance with Section 401, there shall be submitted to Authority for its approval such plans, specifications, and other materials for the proposed work as are required by the Design Review Procedure, all within such reasonable time limits as the Authority shall require therefor.

b. If the Authority shall consent to any alteration, addition, change or modification requiring such consent under Section 401 hereof, the same shall be accomplished in compliance with these requirements:

(i) No work shall be undertaken until there shall have been produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction.

The Authority agrees to join in the application for such permits or authorizations, whenever such action is necessary, but at the Developer's sole cost and expense.

(ii) No work shall be undertaken until there shall have been presented evidence reasonably acceptable to Authority of Developer's ability to pay for the cost thereof.

Section 403: Failure to Comply with Change Requirements.

If there shall be a failure to comply with the foregoing requirements of this Article IV, the Authority may, without limiting other remedies available to it, direct in writing that any work done without the prior written approval of the Authority be modified, reconstructed or removed. Such a directive shall promptly be complied with and no further work shall be done until such directive is satisfied. The Authority shall not exercise the remedy described in this Section if and to the extent that the Developer has proceeded in good faith in construction and reasonably demonstrates that it is more likely than not that the Authority would have approved the work in question had it been submitted for approval pursuant to Section 402.

ARTICLE V

TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

Section 501: General Terms Relating to Transfer of Interest in Property by Developer.

a. After delivery of the Parcel A Deed and prior to the completion of the construction of each Phase of the Improvements in accordance with this Agreement, no legal or beneficial interest in such Phase (which term shall be deemed to include successors in interest of such interest) shall be transferred, or caused or suffered to be transferred, which would directly or indirectly change the legal or beneficial ownership interests in the Developer or the control of the Developer from that existing on the date hereof (which ownership interests and control are presently as set out in Exhibit K attached hereto and made a part hereof), except an involuntary transfer caused by the death or incapacity of any such party, or transfer of limited partnership interests in connection with a bona fide financing transaction, or except as provided in Section 502 hereof, without the written approval of the Authority; nor without such written approval, shall there be any other change in the ownership of such interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Developer, by any other methods or means; provided, however, that such approval shall not be required for changes aggregating no more than ten percent (10%) in beneficial interest in the

Developer or for any transfers of limited partnership interests to other partners or members of partners' families (including trusts for the benefit of such persons) so long as Donald J. Chiofaro remains directly or indirectly as the managing general partner of Developer, de jure and de facto. The Developer shall advise the Authority of any and all proposed changes in such interests and shall in addition furnish the Authority with an up-to-date list of all present and proposed new owners thereof, setting forth the amounts of such interest owned or to be owned by each owner, and with any other information relating to such proposed change which the Authority shall reasonably require. Once a Certificate of Completion has been issued hereunder for a particular Phase there shall be no limitation imposed hereby relative to the legal or beneficial ownership of the Phase in question.

b. Developer may itself convey or cause the Authority to convey each of the Phase 1 Site and Phase 2 Site to separate entities which are affiliates of Developer and which otherwise comply with the ownership requirements hereof originally imposed on Developer, provided that, as a condition precedent, the Developer shall notify the Authority in writing of the proposed transfer of ownership and the Director of the Authority shall deliver a written Certification that such entities comply with the ownership requirements hereof, and further provided that each such entity expressly assumes and agrees to be bound by this Agreement, to the extent the same applies to the Phase in question. Except as provided above, the Developer agrees that it will not, after

delivery of the Deed and prior to the completion of the construction of each Phase as required by this Agreement, allow any liens or encumbrances to exist (except those existing on the Closing Date and except any mortgages given to secure construction and permanent financing for the Phase in question and cross easements and the like contemplated hereby (all of which cross easements, unless expressly permitted hereunder, shall be subject to the prior approval of the Authority)) or make or suffer to be made any assignment, lease (which shall not preclude bona fide occupancy leases), or any other manner of transfer of its interest in the Phase 1 Site or Phase 2 Site, as the case may be, or in this Agreement, except as provided in Section 502, unless it shall have complied with the following covenants, which shall be covenants that run with the land:

1. The transferee or transferees shall have been approved as such in writing by the Authority.
2. The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Developer, to begin, complete, and/or maintain and operate, as applicable, the Improvements and all obligations of the Developer provided for in this Agreement. The

fact that any transferee of, or any other successor in interest whatsoever to the Property, or any part thereof, shall, for whatever reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the Property or the construction of the Improvements. It is the intent of this, together with other provisions of this Agreement, to insure (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) that no transfer of or change with respect to ownership, possession, or control, shall operate legally or practically to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the Authority would have had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Developer shall pay to the Authority the expenses

and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee. Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements from any of its obligations with respect thereto.

3. There has been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting the proposed transfer.

4. The Developer and its transferee and transferees shall comply with such other conditions as the Authority may find reasonably necessary and desirable in order to achieve and safeguard the purposes of this Agreement.

c. In the event of any violation by such a transferee of any part or parcel of the Property of any obligation assumed or required to be assumed under subsection (b) of this Section, which

violation shall occur prior to receipt of the applicable Certificate of Completion granted pursuant to Section 304, the Developer shall be responsible, jointly and severally with the transferee, for curing or effecting the cure of such violation. If the Developer shall fail or refuse to effect such cure, the Authority may institute such actions or proceedings against the transferee and/or the Developer as the Authority deems appropriate, including actions and proceedings to compel specific performance. Payment of all costs and expenses which may be incurred by the Authority in instituting and prosecuting such action or proceedings shall be governed by Section 701 of this Agreement.

Section 502: Mortgage of Property by the Developer.

The limitations contained in this agreement relating to Developer's right to encumber, pledge, or convey its rights, title and interest in and to each of the Phase 1 Site and the Phase 2 Site by way of a bona fide mortgage shall terminate with respect to each Phase on the date of the Certificate of Completion for the Phase in question.

Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Project Site and the Improvements, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or

loans obtained by the Developer to finance the acquisition of the Project Site (or any portion thereof) and the development, construction, repair or reconstruction of the Improvements, or to refinance any outstanding loan or loans therefor obtained by the Developer for any such purpose; provided, however, that the Developer shall give prior written notice to the Authority of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the Authority may require.

Mortgages on the Project Site or any portion thereof shall secure indebtedness related to the development of the Project Site only and may not secure or cross collateralize indebtedness or obligations arising in connection with other properties or unrelated to the development of the Project Site, and each such mortgagee shall agree that the proceeds of such indebtedness shall be used only in such development.

The holder of any such mortgage (including such a holder who obtains title to the Project Site and the Improvements or any portion or portions thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to construct or

complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 503.

Section 503: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion.

a. If a mortgagee, through the operation of its contract to finance the acquisition of the Project Site and development of the Improvements or by foreclosure, acquires fee simple title to the Project Site and the Improvements or any portion or portions thereof prior to the completion of the Phase in question the mortgagee shall have the following options only:

1. Complete construction of such Phase in accordance with the approved Final Working Drawings and Specifications and any approved Change Order, and this Agreement, and in all other respects comply with the provisions of this Agreement, or
2. Sell, assign, or transfer, with the prior written consent of the Authority, fee simple title to the portion of the Project Site and Improvements included in the Phase in question or any portion or portions thereof to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect to only

the Phase in question by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds, or

3. Reconvey fee simple title to the Phase in question or any portion or portions thereof to the Authority, in which event the provisions of Section 901 relative to resale shall apply.

b. In the event that a mortgagee elects to complete construction pursuant to subsection (a) (1) above, or sells, assigns or transfers pursuant to subsection (a) (2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements in accordance with this Agreement, and upon such completion, the mortgagee or purchaser, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 304.

c. In no event shall any mortgagee be personally liable for breaches of this Agreement prior to the time it acquires title or takes possession of the Project Site (or portion thereof) or after it shall convey title or possession, provided that development, ownership and operation of the Project Site (or portion thereof) shall be subject to compliance with this Agreement and shall require corrections of any such breaches within the time period allowed (as extended hereunder). A mortgagee of one Phase shall

not be responsible for any obligations associated with the other Phase, except as such responsibility must be undertaken to insure that the intent of the parties under this Agreement is preserved.

ARTICLE VI

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 601: Maintenance and Operation.

With respect to each Phase, the Developer shall, at all times until the Covenant Expiration Date for such Phase, keep the Property and all Improvements in such Phase in good and safe condition and repair, and in the occupancy, maintenance and operation of such improvements, the Property and the Improvements in such Phase shall comply with all laws, ordinances, codes and regulations applicable thereto.

ARTICLE VII

INDEMNIFICATION

Section 701: Reimbursement of City and Authority in Respect of Certain Litigation.

The Developer shall pay all reasonable costs, expenses, judgments, decrees or damages and the amounts of all judgments and

decrees, which may be incurred by the City or Authority in any proceedings brought to enforce the obligations of the Developer set forth in the provisions of this Agreement, to the extent the City or Authority so prevails. It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the City and Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Developer except that a mortgagee who becomes a mortgagee after, and who acquires title after, the Developer has become liable for any costs, expenses, judgments, decrees or damages, shall take subject to (but not be personally liable for) such costs, expenses, judgments, decrees or damages associated with the Phase in question and incurred prior to the mortgage in question.

ARTICLE VIII

INSURANCE

Section 801: Insurance Coverage.

a. With respect to each Phase, until the Covenant Expiration Date for such Phase, the Developer shall keep the Improvements and personalty used in connection therewith insured by fire and extended insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees with respect to similar properties in the City. Such

insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the Improvements or equipment, and, in any event, in amounts not less than eighty per centum of the then current replacement cost of such Improvements or equipment. Such replacement cost shall be agreed to annually by the insurer and a certificate thereof delivered to the Authority. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Developer, the mortgagee, and, subject to the rights of the mortgagee, the City and the Authority, as their respective interests may appear. The inclusion of the Authority and the City as a loss payee under insurance policies to be maintained by the Developer shall at all times be subordinate to, and shall in no way affect, the rights of any mortgagee named as a loss payee from applying the proceeds of insurance, at the election of such mortgagee, either (i) first, to the repair and reconstruction of the Improvements to the satisfaction of such mortgagee, with any balance of the insurance proceeds after the completion of such repair and reconstruction to be applied to the repayment or reduction of the mortgage indebtedness, with any remaining balance to be paid to the Developer and the City and the Authority, as their respective interests may appear, or (ii) first, to the repayment of any mortgage indebtedness, with any remaining balance

to be paid to the Developer and the City and the Authority as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority and the City at least thirty (30) days prior to the expiration of current coverage.

Section 802: Non-Cancellation Clause.

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the City until after at least thirty (30) days prior notice has been given to the City and Authority to the effect that such insurance policies are to be cancelled, changed or terminated at a particular time.

Section 803: Procurement of Insurance if Developer Fails to do so.

If the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City or the Authority at its option, may procure or renew such insurance, and

all amounts of money paid therefor by the City or the Authority shall be payable by the Developer to the City or the Authority; with interest thereon at the rate of twelve per centum (12%) per annum from the date the same were paid by the City or the Authority to the date of payment thereof by the Developer. The City or the Authority shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by it.

Section 804: Developer's Obligations with Respect to Restoration and Reconstruction.

a. Whenever any Improvements, or any part thereof, shall have been damaged or destroyed prior to the Covenant Expiration Date for the Phase in question, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of any such Improvements shall, to the extent in excess of \$250,000 (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases after the date hereof) and unless otherwise required to be distributed by any mortgagee, be deposited in a fully separate account of the Developer and held by the mortgagee holding a mortgage on such Improvements (or such other institutional holder as Authority may approve), for application, in accordance with then customary institutional construction loan requirements and

procedures, to or toward the payment of such reconstruction, restoration or repair, subject, however, to the provision of subsection (a) of Section 801.

b. The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any mortgagee of record permitted hereunder and the rights of the Authority and the City.

c. The Developer, with the written approval of the Authority and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of the Improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for reconstruction, restoration, or repair shall be retained by the Developer, subject to the rights of such mortgagee and the rights of the Authority and the City.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all material respects be in

accordance with and conform to the provisions of the Final Working Drawings and Specifications, any approved Change Orders, and the provisions of this Agreement.

e. In no event shall the Developer be obligated to incur costs for repair and reconstruction in excess of the proceeds, if any, received from claims which may have arisen and been settled against the insurers on account of damage or destruction for construction, restoration or repair and which the mortgagee permits to be used therefor. To the extent that there are insufficient monies received, the Developers' obligation to reconstruct, restore or repair shall be reduced, provided that any such reduced reconstruction, restoration or repair shall be subject to approval by the Authority with respect to the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) and other Improvements. Developer agrees to exercise all reasonable efforts to obtain permits necessary to reconstruct, restore or repair such Improvements, but Developer shall in no event be obligated under this Agreement to reconstruct, restore or repair such Improvements if applicable laws or regulations do not allow the same to be accomplished.

Section 805: Commencement and Completion of Reconstruction.

Subject to the foregoing, the Developer shall commence to reconstruct or repair any Improvements and equipment on the

Project Site or any portion or portions thereof, which have been destroyed or damaged prior to the Covenant Expiration Date applicable thereto, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee which will make such proceeds available therefor (or, if the conditions then prevailing require a longer period, such longer period as the conditions shall mandate), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion. Notwithstanding the foregoing, such reconstruction or repair shall in any event be completed within twenty-four (24) months after the start thereof, or such longer period as is reasonable required therefor.

ARTICLE IX
RIGHTS, REMEDIES AND PROCEDURES IN
THE EVENT OF A BREACH BY DEVELOPER

Section 901: Default by Developer re Design Procedures,
Construction, and Transfers.

Except for the provisions of Section 905, the default provisions of this Article IX shall cease to apply to a Phase and any portion of the Project Site and Improvements thereon, once a Certificate of Completion has issued for such Phase.

If after delivery of the Parcel A Deed the Developer shall fail or refuse to commence, diligently pursue or complete construction of a Phase in accordance herewith, to comply with the Design Review Procedures applicable thereto, or if there is any unauthorized change in the ownership or distribution of the relative interests in the Developer with respect to such phase or with respect to the identity of the parties in control of the Developer or degree thereof or the ownership of the Phase as provided in Section 501, the Authority shall in writing notify the Developer of such failure or violation. The Developer shall thereupon have 180 days from the receipt by it of such written notice to cure such failure or violation.

a. If the Developer does not cure such failure or violation within the 180 day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) or where cure requires more than 180 days if Developer does not promptly begin such cure and thereafter diligently prosecute the same to completion, and if the then holders of record of permitted mortgages on the Phase in question do not exercise their rights to cure such violation or failure (as provided in Section 903 hereof), an Event of Default shall be deemed to exist.

The Authority may invoke its remedies hereunder and under Section 901(c) on account of an Event of Default under this Article at any time within a two-year period after the date of the

notice which initially triggered the Event of Default in question. The authority shall be deemed to "invoke its remedies hereunder" with respect to a portion of the Project Site upon the earlier of a written demand for conveyance or reconveyance thereof pursuant to this Agreement or reentry in accordance with Section 901(b). Failure of the Authority timely to invoke such remedy shall be deemed a waiver of the particular Event of Default and of the Developer's obligations herein which underly such Event of Default with regard to the Phase(s) in question.

(i) If an Event of Default relates to Phase 1 prior to the commencement of any substantial construction in either Phase 1 or Phase 2 (demolition and surface site work shall not be considered substantial construction, but the good faith commencement of excavation, foundation and other sub-surface work shall constitute substantial construction), then the Authority's sole remedy shall be to cause a reconveyance of the Property, only, pursuant to Section 901(c) and the related provisions of this Article IX, and this Agreement shall terminate without recourse to the parties except as provided in Section 901(c).

(ii) If an Event of Default relates to Phase 1 at a time when substantial construction (as defined in Clause (i) above) of Phase 1 Improvements has occurred, then the Authority's sole remedy shall be to cause a conveyance to the Authority of the entire Project Site pursuant to Section 901(c) and the

related provisions of this Article IX, and this Agreement shall terminate without recourse to the parties except as provided in Section 901(c).

(iii) If an Event of Default relates to Phase 2 at a time when substantial construction of Phase 1 Improvements has been commenced and is then diligently being prosecuted (or has been completed), the Authority's sole remedy shall relate to the Phase 2 Site only and shall be the right to cause a conveyance to the Authority of the Phase 2 Site as described in clause (ii) above.

To the extent that the Authority invokes a remedy hereunder, the Developer shall promptly transfer possession of, and convey, the property in question and all improvements thereon, to the Authority, by Quitclaim Deed, provided that such conveyance shall be subject only to any existing mortgages thereon and other encumbrances permitted under this Agreement. If the Developer shall fail so to convey, the Authority may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer.

b. In the event of an Event or Default the Authority shall also have the right to re-enter and take possession of the portion of the Project Site as to which the Authority is

entitled to invoke its remedies, and all Improvements thereon and to terminate (and revest and vest in the Authority) the fee simple estate therein, in the title condition described in Section 901(a), it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deeds shall contain, a condition subsequent to the effect that in the event of such an Event of Default, the Authority at its option may declare a termination in favor of the Authority of the title to, and of all the rights and interests in, the particular portion of the Project Site and such Improvements and that such title, and all rights and interests of the Developer, and any assigns or successors in interest, in such portion of the Project Site and such Improvements, shall revert to the Authority; provided, that such condition subsequent and any revesting of title as a result thereof in the Authority shall always be subject to and limited by and shall not defeat, render invalid, or limit in any way the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages.

c. If the Developer or a mortgagee reconveys to the Authority, pursuant to Section 901 (a) or 503(a)(3), the Authority shall, subject to Developer's Rights of Refusal described in Section 901(d), undertake with due diligence and in a commercially reasonable manner to resell the Project

Site, or so much thereof as has so been reconveyed or which it has so re-entered, and all of the Improvements thereon. In preparation for resale, the Authority shall consult with, and consider suggestions of, Developer as to methods and strategies of maximizing the net proceeds from the resale of the portion of the Project Site in question. The Authority may attempt to resell the portion of the Project Site in question in an "as is" condition, and shall have no obligation to spend any funds on the improvements in order to prepare them for sale. The proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the Project Site or portion thereof, and Improvements thereon, subsequent to such reconveyance shall be used:

- (1) First, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City with respect to the portion of the Project Site in question and the Improvements thereon up to the time of such resale (or in the event the portion of the Project Site in question and the Improvements thereon are exempt from taxation during the period of ownership thereof by the City, an amount equal to such taxes as would have been payable if the same were not so exempt); and

- (2) Second, in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Project Site, or portion thereof, or the Improvements, in favor of mechanics, materialmen or subcontractors;
- (3) Third, to reimburse the City and the Authority for all out-of-pocket third party expenses reasonably and proximately incurred by the City and the Authority, including legal, management, brokerage, and repair costs, in connection with the recapture, management, conservation, construction and resale of the portion of the Project Site in question and the Improvements thereon;
- (4) Fourth to reimburse the Developer for 75% of the "Total Development Cost" allocable to the portion of the Project Site in question and the Improvements thereon. "Total Development Cost" means the amount expended by the Developer in the purchase of the portion of the Project Site in question and development of the Improvements thereon less any profit theretofore realized by the Developer from the disposition of any interest therein or in any part or parcel thereof, and less any income realized

by the Developer from its use of the portion of the Project Site in question or such interest;

- (5) Fifth, to reimburse the City and the Authority for all so-called "internal" costs and expenses reasonably and proximately incurred by the City and the Authority, including the salaries of City and the Authority personnel, in connection with the recapture, management and resale of the portion of the Project Site in question or the Improvements and all administrative and overhead costs in connection therewith;
- (6) Sixth, to pay or reimburse the City and the Authority for any amounts otherwise owing to the City and the Authority in connection with such portion of the Project Site from the Developer;
- (7) Seventh, if there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Developer for and up to the unreimbursed 25% of Total Development Cost allocable to the portion of the Project Site in question plus an amount calculated at the annual rate of 12.75% on the total amount of such Total Development Cost allocable to the portion of the Project Site in question and Improvements thereon from the times

incurred through the times said cost is reimbursed under clause (4) and this clause (8) of this Section;

(8) Eighth, any balance remaining shall remain the property of the Authority.

d. The Developer shall have the following rights of refusal prior to any resale or other disposition by the Authority of any portion of the Project Site and Improvements thereon under this Article IX after an Event of Default. Prior to entering into any transaction with a third party for resale or other disposition of all or any portion of the Project Site and improvements thereon under this Article IX on terms relating to the required development thereof which differ in any material respect from the requirements imposed on Developer with respect thereto hereunder (the "Revised Development Conditions"), the Authority shall first reoffer such portion of the Project Site and improvements to Developer for at least a one-month period on the Revised Development Conditions. If Developer accepts such reoffer within such one-month period, the portion of the Project Site in question and Improvements thereon shall be reconveyed to Developer subject to the Revised Development Conditions which shall be substituted for the corresponding terms of this Agreement, unless the Authority in good faith determines that Developer is not ready, willing and able to develop such portion of the Project Site in accordance with the Revised Development Conditions. If Developer

does not exercise its rights within such one-month period, the Authority shall be free to resell or redispense of the portion of the Project Site in question, free of Developer's Rights of Refusal hereunder, at any time within one year after the date of the reoffer to Developer on terms which are no more favorable to the buyer than the Revised Development Conditions offered to Developer hereunder. If the Authority does not so resell, the Developer's Rights of Refusal shall apply prior to any subsequent resales or redispositions based on Revised Development Conditions. The Authority's determination as to whether Revised Development Conditions exist or as to whether the Authority's resale or redispense is on terms which are no more favorable to the buyer than the Revised Development Conditions offered to Developer hereunder shall be conclusive if such determination is made in good faith.

Section 902: Notices of Breaches to Mortgagees.

If the Authority gives written notice to the Developer of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the portion of the Project Site in question, permitted under this Agreement. To facilitate the operation of this Section, the Developer shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees from whom the Developer has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its

address and request that the provisions of Section 1306 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 903: Mortgagee May Cure Breach of Developer.

If the Developer has received notice from the Authority of a default under this Agreement and such breach is not cured by the Developer before the expiration of the period provided therefor, the holders of record of mortgages on the portion of the Project Site in question as permitted under this Agreement may cure any breach upon giving written notice of their intention to do so to the Authority within ninety (90) days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

If any mortgagee elects so to cure any breach, a reasonable extension of time for performance will be granted by the Authority to enable the mortgagee, and its transferee, to correct such breach and to complete construction of the Phase in question to the extent that such mortgagee or its transferee will be entitled to receive a Certificate of Completion hereunder.

Section 904: Cross Easements

If the Authority invokes its remedy with respect to a portion, but less than all, of the Project Site, then the Developer and the

Authority agree each to grant easements to the other as may be required and appropriate for the construction and operation of the Phase on the property owned by each such party.

Section 905: Remedies for Other Breaches.

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 901 for the defaults therein described shall be exclusive. The provisions of this Section 905 shall survive issuance of the Certificate of Completion hereunder.

ARTICLE X

DESIGNATION CONDITIONS

Section 1001: Compliance with Designation Conditions; Linkage

a. The Developer shall at all times proceed hereunder in essential conformity with the Designation Conditions. The Designation Conditions shall, at Developer's request, from time to

time, be reviewed by the Authority to the extent that Developer is unable to conform therewith by reason of applicable legal requirements or changed legal circumstances or other matters beyond the control of the Developer. Decisions made by the Authority after good faith reasonable attempts to preserve the essential rights and obligations of the parties shall be conclusive. Where any Designation Condition is inconsistent with this Agreement, the provisions of this Agreement shall prevail. Otherwise, the provisions of this Agreement shall supplement, but not supersede, the Designation Conditions.

b. Among other things, one Designation Condition is that the Developer is required to comply with certain so-called "linkage policies". Linkage policies for the City of Boston are contained in Article 26 of the Boston Zoning Code. In implementation of that requirement Developer and the Authority shall enter into an agreement in the form attached as Exhibit L.

ARTICLE XI

CONDITIONS PRECEDENT TO CERTAIN CONSTRUCTION

Section 1101: Conditions Precedent to Certain Construction

As conditions precedent to the commencement of construction of a particular Phase, the Developer shall satisfy the following conditions (which, if not satisfied by the relevant Construction

Commencement Date, shall constitute a failure or violation to which the default provisions of Section 901 apply):

a. Not later than commencement of construction for each Phase, Developer shall submit to the Authority a copy (certified by Developer to be true and correct) of a firm commitment, issued by a lender which is reasonably satisfactory to the Authority and which is an Institution as herein defined, whereby such lender agrees to furnish construction financing for the Improvements contained in the Final Plans and Specifications for such Phase together with evidence satisfactory to the Authority that Developer has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender, is adequate to complete the Improvements included in such Phase (and any off-site improvements associated therewith) in accordance with the requirements of this Agreement. Such commitment shall be accompanied by such further materials as the Authority may reasonably request evidencing satisfaction of, or Developer's ability to satisfy, the conditions to lending therein set forth. Institution shall mean any one of the following:

(i) a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code) chartered under the laws

of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$500,000,000.

(ii) an educational institution with a capital endowment of not less than \$500,000,000.

(iii) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each case, having a net worth, determined in accordance with sound, conservative accounting practice, of not less than \$500,000,000.

(iv) any combination of the foregoing with a combined net worth, capital and surplus account, capital endowment and the like of not less \$500,000.000

b. Not later than commencement of construction of each Phase, Developer shall submit to the Authority:

(i) Copies (certified by Developer to be true and correct) of the contracts between Developer and the Architect for such Phase and between the Developer and the Contractor

engaged by Developer for the construction of the Improvements shown and described in the Final Plans and Specifications for such Phase, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to be performed by the Contractor and those engaged by him and in compliance with Section 1201 hereof. Such contracts and writing shall be subject to the approval of the Authority, which approval shall not unreasonably be withheld.

The Developer shall not discharge the Architect or the Contractor without cause or hire new or additional architects or contractors or, in any material respect affecting Developer's obligations hereunder alter or amend any contract for services between the Architect or the Contractor without in each instance obtaining the prior written consent of the Authority. Consistent with the intent of the parties that the Authority approve contracts with any architect or contractor, all such contracts shall be submitted for such approval even if the Developer is not a direct party thereto.

(ii) A copy of a building permit issued by the Boston Building Department fully covering the Improvements to be constructed in such Phase, together with evidence satisfactory to the Authority that all fees in connection therewith have been paid.

(iii) A copy of a performance and payment bond or other assurance of completion of the Improvements contained in the Final Plans and Specifications satisfactory in form and amount to the Authority. Notwithstanding the foregoing, if the construction mortgagee for the Phase in question accepts some form of completion assurance other than a performance and payment bond, the Authority shall accept such form of assurance hereunder with the City named as co-obligee with such mortgagee.

Developer shall at all times keep the Authority fully and currently advised of the status of all aspects of Developer's progress in meeting the conditions of this Agreement with respect to the development of each Phase, including, without limiting the generality of the foregoing, development of the Design Materials, securing of financing, and arrangements for construction. All contracts entered into by Developer respecting the development of the Property shall obligate the parties to act in a manner consistent with the obligations of Developer under this Agreement. During the implementation of any such contracts the Authority shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the obligations of Developer under this Agreement.

ARTICLE XII
ANTI-DISCRIMINATION; HIRING

Section 1201: Anti-Discrimination; Hiring

The Developer agrees that in the construction of the Improvements in each Phase, and otherwise through the Covenant Expiration Date for each Phase, in the performance of this Agreement it shall comply and shall cause all contractors, tenants and users of the Phase in question to comply with all applicable laws, ordinances, regulations and orders from time to time in effect relating to non-discrimination, equal employment opportunity, contract compliance and affirmative action.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

Section 1301: Obligations and Rights and Remedies Cumulative and Separable.

The respective rights and remedies of the City, the Authority and the Developer provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 1302: Amendment.

This Agreement shall constitute the entire agreement between the parties hereto; it may be amended only by an instrument in writing signed by the City, through the Authority, the Authority and the Developer.

Section 1303: How Agreement Affected by Provisions Being Held Invalid.

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the requirements of applicable laws.

Section 1304: Time of Essence; Covenants to be Enforceable.

Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

The covenants herein contained, which are expressly stated to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest

therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the City and the Authority against the Developer (including its successors and assigns to or of the Property or the Improvements, or any part thereof for any interest therein and any party in possession or occupancy of the Property or the Improvements or any part thereof). In amplification, and not in restriction of the provision hereof, it is intended and agreed that the City and the Authority shall be deemed beneficiaries of such covenants, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided.

Section 1305: City and Authority Staff and Officers Barred From Interest.

a. No member, official or employee of the City and the Authority shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or

employee of the City or the Authority shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or the Authority or for any amount which may become due to the Developer or to its successor or on any obligations under the terms of this Agreement.

b. The Developer covenants that he has not employed or retained any company or person (other than a full-time bona fide employee working for the Developer) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person (other than such an employee) any gift, contribution, fee, commission, percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 1306: Approvals and Notices.

Where provisions of this Agreement require that notices, consents, approvals, authorizations, certifications, reviews and the like are required to be given to the Authority or received from the Authority hereunder, such provisions shall be deemed to require that such notices, consents, approvals, authorizations, certifications, reviews and the like be given to or received from the Authority acting in connection with its transfer to the Developer of certain of the Property hereunder on behalf of the City. In addition and not in limitation of the Authority's rights and responsibilities on its own behalf hereunder, the Public Facilities Commission of the City has delegated to the Authority

all of its powers and functions to act hereunder on behalf of the City of Boston, and the Developer has entered into this Agreement in reliance upon such delegation to the Authority. Accordingly, where, pursuant to this Agreement, following delivery of the deed and payment of the purchase price, any document or proposed action by the Developer is submitted by it to the Authority and the Developer has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by both the Authority and the City with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent or approval of the City or Authority is required hereunder, such consent or approval shall not be unreasonably withheld, but the same shall be valid and binding only if given in a writing signed by a duly authorized official.

Notices shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to the principal office of the party to whom it is directed, which is initially as follows:

Developer:

Fort Hill Square Associates
c/o The Chiofaro Company, Inc.
One Post Office Square
Boston, Massachusetts 02109

with a copies to:

Fort Hill Land Company
1006 Wilmington Trust Center
Rodney Square
North Wilmington, Delaware 19801

and

Elliot M. Surkin, Esquire
Hill & Barlow
225 Franklin Street
Boston, Massachusetts

City:

City of Boston
Public Facilities Department
26 Court Street, 6th Floor
Boston, Massachusetts 02108

Authority:

Boston Redevelopment Authority
City Hall Square
Boston, Massachusetts 02201

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Any requests for approvals made by Developer to the City or Authority where such approvals shall be deemed granted after a period of non-reply by the City or the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

Notice and other communications to mortgagees shall be deemed given when deposited in the United States mail and sent registered

or certified mail, postage prepaid, to the last known address of the party concerned.

Section 1307: Matters to be Disregarded.

The index to and titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 1308: Obligations to Continue.

Except as to obligations expressly or by clear implication required to be performed at or prior to the time of closing of the sale and conveyance of title to and delivery of possession of the Property, and except as otherwise herein expressly provided with respect to issuance of the Certificate of Completion, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of title to and the delivery of possession of the Property to the Developer.

Section 1309: Excusable Delays.

For the purposes of any of the provisions of this Agreement, neither the City nor the Authority nor the Developer, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the

performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, freight embargoes, and unusually severe weather or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the City and the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty or inability to secure a building permit be a cause for an extension hereunder.

Section 1310: Agreement Binding on Successors and Assigns.

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Developer and any

public body succeeding to the interests of the City or the Authority.

Section 1311: Limitation of Developer's Liability.

The liability of the Developer hereunder and under guaranties, covenants, certifications and the like delivered pursuant hereto shall be limited to the assets from time to time of the Developer and no partner, trustee or beneficiary of Developer, from time to time, shall have any personal liability hereunder or thereunder. Monetary damages against the Developer hereunder and under guaranties, covenants, certifications and the like delivered pursuant hereto (as distinguished from equitable remedies not involving the payment or expenditure of money such as, without limitation, actions to cause the conveyance of land under Section 901) shall not exceed, in the aggregate, one million dollars (\$1,000,000).

Except as otherwise provided in Section 901, but notwithstanding anything else to the contrary herein contained, liability arising under this agreement in connection with a particular Phase shall be limited to Developer's interest in such Phase (including the proceeds and profits arising therefrom). In illustration, but not limitation of the foregoing, if separate legal entities own each of the Phase 1 Site and the Phase 2 Site in accordance with and as contemplated by Section 501(b) hereof, then, except as otherwise provided in Section 901, the Phase 1

Site owner shall have no liability or responsibility in connection with the acts, neglects, defaults and the like of the Phase 2 Site owner or for any occurrence or condition of the Phase 2 Site, and vice versa.

Section 1312: Waivers.

Any right or remedy which the City, the Authority or the Developer may have under this Agreement, or any of the provisions, may be waived in writing, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Developer of a right under Section 901 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 902. The City or the Authority, in writing, may waive any provisions herein contained for its or their benefit.

Section 1313: Sole Obligation of Authority and City.

The sole obligation of the Authority and the City hereunder shall be timely to perform their respective duties set forth hereunder with respect to approvals required of them, with respect to final designation of Developer and with respect to conveyance of the Property. The Authority shall, however, fully cooperate with Developer in efforts to obtain approvals from the City and

other governmental authorities. Neither the Authority nor the City guaranty the issuance of any such approvals.

Section 1314: Status Reports

Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

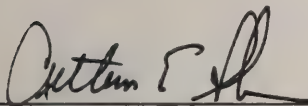
Section 1315: Developer's Cooperation in Relocation or Demolition of the High Street Ramp.

It is anticipated that Phase 2 of the Project shall be built whether or not the High Street Ramp is relocated or demolished by appropriate state governmental authorities. If the High Street Ramp is not removed or relocated in accordance with the terms and procedures of the Designation Conditions, then Phase 2 shall be revised as provided in Section 302(c) of this Agreement. Developer has agreed to cooperate in relocating or demolishing the High Street Ramp, and to that end the Developer is hereby authorized to take all actions as it considers appropriate, including actions with governmental authorities, to cause the demolition of the High Street Ramp by appropriate state authorities. The foregoing authority shall specifically apply prior to the conveyance of Parcel B to the Developer. This

authorization does not waive any requirements for permits necessary for the demolition of said ramp, including any permits which may be required from the Authority.

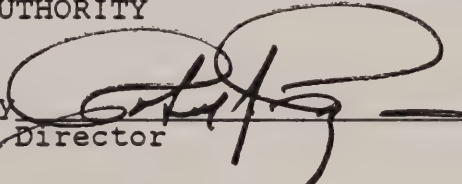
IN WITNESS WHEREOF, as of the 30th day of May, 1984, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

APPROVED AS TO FORM:



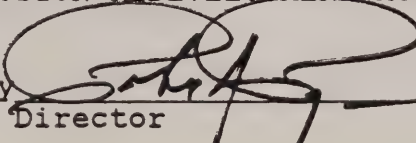
Chief General Counsel
Boston Redevelopment Authority

CITY OF BOSTON, acting by and through the BOSTON REDEVELOPMENT AUTHORITY

By 

Director

BOSTON REDEVELOPMENT AUTHORITY

By 

Director

FORT HILL SQUARE ASSOCIATES

BY BC ASSOCIATES,
MANAGING PARTNER

By 

Donald J. Chiofaro
Managing General Partner

Signed, sealed and delivered in the presence of:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston

May 30, 1984

Then personally appeared before me the above-named Robert J. Ryan, Director of the Boston Redevelopment Authority, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority acting in its own behalf and on behalf of the City of Boston and acknowledged the same to be the free act and deed of the City of Boston and of said Authority.

Before me,



Notary Public

My commission expires: *Aug 3, 1990*

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

, 1984

Then personally appeared the above-named Donald J. Chiofaro, Managing General Partner of BC Associates, a general partner of Fort Hill Square Associates, and acknowledged the foregoing instrument to be the free act and deed of Fort Hill Square Associates.

Before me,

Notary Public

My commission expires:

CITY OF BOSTON
IN CITY COUNCIL

WHEREAS, THE CITY OF BOSTON Real Property Department has notified the Public Facilities Department that said Department has determined that the Fort Hill Square Garage, in the City of Boston is no longer needed for Real Property Department purposes; it is hereby

ORDERED: That the land (see attached site plan presented to the City Council on November 31, 1983) with building, known as the Fort Hill Square Garage, having been declared surplus by the Real Property Board is hereby found to be surplus within the meaning of St. 1909, c. 486, s. 31B (as appearing in St. 1966, c. 642, s. 12) and the care, custody, management and control thereof is hereby transferred to the Public Facilities Commission.

BE IT FURTHER ORDERED: That the above be and hereby is expressly conditionally approved upon the following terms:

- W
1. A) Purchase price shall be \$21,000,000 for the garage, land and "air rights" to develop the Fort Hill Square Garage Site.
 - B) The Purchaser/Developer agrees to pay an additional \$4,000,000 for the removal or relocation of the High Street Ramp subject to approval of the Authority and of the Executive Office of Transportation prior to obtaining the Certificate of Occupancy for the final phase of the project.
 2. Purchaser/Developer agrees to begin construction within 18 months of conveyance.
 3. Purchaser/Developer agrees to maintain a minimum of 792 public parking spaces.
 4. Purchaser/Developer agrees to comply with the linkage policies as presented in the report of the Advisory Group on Linkage Between Downtown Development and Neighborhood Housing, issued on October 14, 1983.

NOV 23 1983

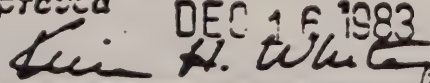
In City Council _____

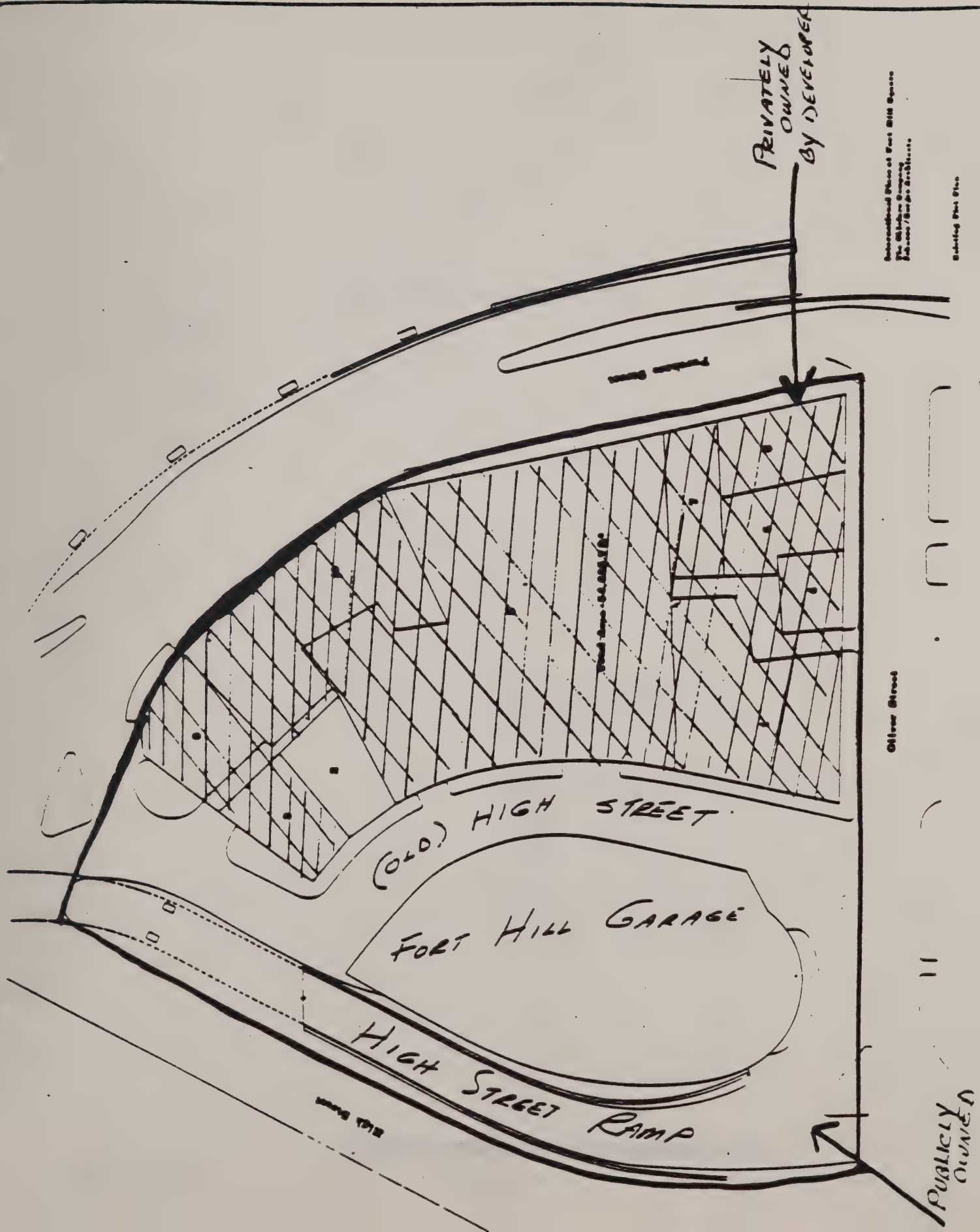
Passed

 City Clerk

Approved

DEC 16 1983

 Mayor



Subsidiary Plan of Fort Hill Square
The Old Hill Company
Architects/Engineers

Building Plan No.

Older Street

11
PUBLICLY
OWNED

DESIGN REVIEW PROCEDURES

CITY OF BOSTON

Raymond L. Flynn, Mayor

BOSTON REDEVELOPMENT AUTHORITY

Robert L. Farrell, Chairman

Joseph J. Walsh, Vice-Chairman

James K. Flaherty, Treasurer

Clarence J. Jones, Vice-Treasurer

William A. McDermott, Jr., Member

Kane Simonian, Secretary

Robert J. Ryan, Director

BOSTON REDEVELOPMENT AUTHORITY DESIGN REVIEW PROCEDURE

All development proposals submitted to the Boston Redevelopment Authority will be subject to design review and approval. Required submissions shall be made at four stages of project design and construction: Schematic Design, Design Development, Contract Documents, and Construction Inspection. Submissions shall include the materials described herein, except that for projects of limited size, scope and impact on their surroundings, certain of the required materials may be waived by the Authority. This determination will be made at the start of each stage of the Design Review Procedure.

In addition to the four-stage Design Review Procedure, other reviews at the request of either the developer or the Authority are encouraged. It is also expected that reasonable requests for progress prints and other materials in addition to those required herein will be met at any time.

Review of Stages 2, 3 and 4 will be limited to consideration of design refinements, new elements not present in previous submissions, and conformity with previously approved submissions.

NOTE: In addition to design review and approval, projects under consideration by the Boston Redevelopment Authority are usually required to submit documentation of developer experience, financial information including pro-formas and any other information deemed appropriate by the Authority.

DESCRIPTION OF SUBMISSION REQUIREMENTS

All drawings shall be clearly identified and shall include north arrow and graphic scale.

For each submission stage, in addition to full-size scale drawings, please provide three copies of a bound booklet containing all submission materials at a reduced size.

I. SCHEMATIC DESIGN

The intent of this review is to secure agreement on the basic design concept. The following materials are required:

- A. Written description of the project including all program elements and space allocation for each element; zoning requirements and preliminary zoning calculations.
- B. Neighborhood plan and sections at an appropriate scale (1" = 50' or larger) showing relationships of the proposal to the neighborhood's massing, building height, scaling elements, open space, major topographic features, pedestrian and vehicular circulation, and land use; black and white 8" x 10" photographs of the site and neighborhood.
- C. Site plan at an appropriate scale (1" = 20' or larger) showing:
 - 1. General relationships of proposed and existing adjacent buildings and open space. Open spaces defined by buildings on adjacent parcels and across streets shall be included.
 - 2. General location of pedestrian ways, driveways, parking, service areas, streets, and major landscape features.
 - 3. Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas.
 - 4. Survey information, such as existing elevations, benchmarks, utilities, etc.
 - 5. Current ownership (including purchase options) of all portions of the development site.
 - 6. Phasing possibilities, if any.
 - 7. Construction limits, if applicable.
- D. Site sections (1" = 20' or larger) showing relationships to adjacent buildings and spaces.
- E. Schematic building plans showing ground floor and typical upper floor(s).

- F. Massing model at 1" = 100' for use in the Authority's downtown cityscape model.
- G. Shadow studies showing the effects of the proposed massing on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.

Submission of site plan and massing options, as well as other sketches and diagrams which will help clarify design issues and the proposed solution is encouraged. After review and agreement on the program, site plan and massing, the following materials are required:

- H. Building and site improvement plans, elevations in the context of the surrounding area, and sections showing organization of functions and spaces, all at an appropriate scale (e.g., 1" = 8'). These drawings shall describe architectural massing, facade design, and proposed materials.
- I. Site model at an appropriate scale (1" = 20' or larger). All nearby buildings and streets should be included to illustrate the relationship of proportions, materials and facade treatment to the surrounding buildings.
- J. Wind impact studies at pedestrian levels describing the effect of the project on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.
- K. Estimated construction schedule for the project.
- L. Eye-level perspective showing the proposal in context of the surrounding area.
- M. Proposed schedule for submission of Design Development materials.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

II. DESIGN DEVELOPMENT

The intent of this review is to secure agreement on the final design prior to detailed work on Contract Documents. The following materials are required:

- A. Written description of the project (including all program elements and space allocation for each element) and zoning calculations.
- B. Site plan at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN) showing:
 - 1. Relationship of proposed building and open space to existing adjacent buildings, open spaces, streets, and buildings and open spaces across streets.

2. Proposed site improvements and amenities including paving, landscaping, lighting and street furniture.
 3. Building and site dimensions, including setbacks and other dimensions subject to zoning requirements.
 4. Any site improvements or areas proposed to be developed by some other party (including identification of responsible party).
 5. Proposed site grading, including typical existing and proposed grades at parcel lines.
- C. Site sections at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN).
- D. Building plans (including preliminary structural and mechanical drawings), sections and elevations at an appropriate scale (e.g., 1" = 8') developed from approved schematic design drawings. Elevations shall show the project in the context of the surrounding area as required by the Authority to illustrate relationships of character, scale and materials. All plans, sections and elevations shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.
- E. Large-scale (e.g., 3/4" = 1'-0") typical exterior wall sections, elevations and details sufficient to describe specific architectural components and methods of their assembly.
- F. Outline Specifications of all materials for site improvements, exterior facades, roofscape, and interior public spaces.
- G. Study model at an appropriate scale (e.g., 1" = 16', or as determined after approval of SCHEMATIC DESIGN) showing refinements of facade design.
- H. Eye-level perspective drawings showing the project in the context of the surrounding area.
- I. Proposed schedule for submission of Contract Documents.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

III. CONTRACT DOCUMENTS

The intent of this review is to secure agreement on the detailed design of the proposal. The following materials are required:

- A. Written description of the project, (including all program elements and space allocation for each element) and zoning calculations.
- B. Site plan showing all site development and landscape details for lighting, paving, planting, street furniture, utilities, grading, drainage, access, service, and parking.
- C. Complete architectural and engineering Drawings and Specifications.
- D. Full-size assemblies (at the project site) of exterior materials and details of construction.
- E. Eye-level perspective drawings or presentation model that accurately represents the project, and a rendered site plan showing all adjacent existing and proposed structures, streets and site improvements.
- F. Site and building plan at 1" = 100' for Authority use in updating its 1" = 100' Photogrammetric Map Sheets.
- G. Construction schedule for the project.

During preparation of the Contract Documents, it is the developer's responsibility to notify the Authority, promptly and secure its approval of all changes from the approved Design Development Drawings that are contemplated for site improvements, exterior facades, roofscape and interior public spaces. Progress Drawings representing 50% completion of the Contract Documents may be required for review by the Authority.

Upon approval by the Authority of the CONTRACT DOCUMENTS, the following submissions are required:

IV. CONSTRUCTION INSPECTION

- A. All Contract Addenda, Change Orders, and other modifications and revisions of approved Contract Documents which affect site improvements, exterior facades, roofscape, and interior public spaces.
- B. Shop drawings of architectural components which differ from, or were not fully described in Contract Documents.

Site visits will be conducted to insure construction of the project in accordance the approved Contract Documents.

October 20, 1983

TERMS AND CONDITIONS FOR TENTATIVE DEVELOPER DESIGNATION
FORT HILL SQUARE GARAGE PARCELS

1. DISPOSITION PRICE

A disposition price \$21,000,000 will be paid to the City upon the conveyance of the garage parcel and underlying fee of High Street, as described in the Development and Design Guidelines for the Fort Hill Square Garage Parcel. An additional \$4,000,000 will be paid to the City upon the first to occur of either a) the relocation of the present High Street ramp by the redeveloper or the State, in either case at no cost to the City, or b) the issuance of the Certificate of Completion on the first element of the project; but, in any event, not later than December 31, 1986 or the transfer of title of the underlying fee in the ramp area to the redeveloper.

2. BUILDING HEIGHT

The ~~maximum~~ height of any building element for the combined public and private parcels shall not exceed 575 feet above average street grade.

3. BUILDING BULK

The ~~maximum~~ floor area ratio as defined in the Boston Zoning Code shall not exceed 16 on the development site.

4. USES

A minimum of 660 public parking spaces shall be provided. The ground floor must be devoted primarily to active retail uses (including restaurants). Ground floor uses shall include the proposed "Crystal Court" of at least 25,000 square feet.

5. HIGH STREET RAMP

The developer shall remove or relocate, or cause the removal or relocation of the High Street ramp subject to approval of the Authority and of the Executive Office of Transportation prior to obtaining the Certificate of Occupancy for the final phase of the project.

6. CONSTRUCTION PHASING

The developer shall submit a schedule for project construction for review and approval by the Authority within 60 days of tentative designation.

7. PUBLIC AMENITIES

The developer shall provide the proposed public amenities (referred to in the proposal as the "Crystal Court") or the major portion thereof, coincident with the opening of the first phase of office building construction, and shall complete the public amenities coincident with the completion of office building construction.

8. DESIGN REVIEW

The developer must submit for review and approval by the Authority all drawings, specifications, and samples of materials at the following three stages in the design process:

- a. Schematic Design,
- b. Design Development, and
- c. Construction documents.

The design review process will emphasize the following aspects of project architecture and planning:

- a. Building massing and compatibility with the scale and character of the downtown Boston's waterfront, financial district, and historic Broad Street district;
- b. Building facades and detailing that will provide a distinctive project while relating strongly to Boston's architectural character;
- c. Building materials of the highest quality;
- d. A major public amenity (the "Crystal Court") that will provide a richly landscaped, weather-protected, active and lively winter-garden that will be open for public use approximately 16 hours a day;
- e. Ground-plane design that will offer entrances to the project at appropriate locations, public sidewalks of high quality paving materials, and connections to the waterfront and financial district reflecting current proposals for the reconstruction of the Central Artery.

9. LINKAGE

The developer shall comply with the linkage policies as presented in the report of the Advisory Group on Linkage Between Downtown Development and Neighborhood Housing, issued on October 14, 1983.

10. REAL ESTATE TAXES

Real estate taxes for the garage and the new development will be paid according to normal City of Boston Chapter 59 Assessing Department practices.



City of Boston
Public Facilities Department

35 Court St., 14th Floor
Boston, Massachusetts 02108

Donald B. Manson
Director

Victor E. Hagan
Associate Director

THE UNDERSIGNED HEREBY CERTIFIES THAT SHE is the Secretary of the Public Facilities Commission, and that at a meeting of the said Commission, duly called and held on Friday, October 21, 1983, whereat Chairman Edward T. Sullivan, Commissioner Stuart E. Marwell and Commissioner James English, being all the members of the said Commission, were present, it was voted

"That the Fort Hill Square Associates, a joint venture, between the Chiofaro Company of Boston and The Hillman Company of Pittsburgh, One Post Office Square, Boston, MA 02109 be tentatively designated developer of the land with building thereon located at Fort Hill Square Garage, in the Downtown district of Boston; subject to such terms and conditions as set forth in a document dated October 20, 1983 entitled 'Terms and Conditions for Tentative Developer Designation, Fort Hill Square Garage Parcel,' filed in the Document Book of the Boston Redevelopment Authority and attached hereto".

Lori B. Seedin
Secretary



City of Boston
Public Facilities Department

26 Court St., 16th Floor
Boston, Massachusetts 02108

Donald B. Manson
Director

Victor E. Hagan
Associate Director

THE UNDERSIGNED HEREBY CERTIFIES THAT SHE is the Secretary of the Public Facilities Commission, and that at a meeting of the said Commission, duly called and held on Friday, October 21, 1983, whereat Chairman Edward T. Sullivan, Commissioner Stuart E. Marwell and Commissioner James English, being all the members of the said Commission, were present, it was voted

"Subject to the approval of the Mayor under St. 1909, c. 486, s. 31B (as appearing in St. 1966, c. 642, s. 12): That it is the intent of this Commission to sell the land with building thereon located at Fort Hill Square Garage in the Downtown district of the City of Boston, to Fort Hill Square Associates, a joint venture, between The Chiofaro Company of Boston and The Hillman Company of Pittsburgh, One Post Office Square Boston, MA 02109; and

That the Director be, and he hereby is, authorized to advertise the intent of this Commission to sell the above described property in accordance with the provisions of Chapter 642 of the Acts of 1966".

Don B. Hagan
Secretary

APPROVED:

Kevin W. White
Mayor of Boston

John J. Sullivan



City of Boston
Public Facilities Department

26 Court St./6th Floor
Boston, Massachusetts 02108

Donald B. Manson
Director

Victor E. Hagan
Associate Director

THE UNDERSIGNED HEREBY CERTIFIES THAT SHE is the Secretary of the Public Facilities Commission, and that at a meeting of the said Commission, duly called and held on Friday, October 21, 1983, whereat Chairman Edward T. Sullivan, Commissioner Stuart E. Marwell and Commissioner James English, being all the members of the said Commission, were present, it was voted

"Subject to the approval of the Mayor under St. 1909, c. 486, s. 31A (as appearing in St. 1966, c. 642, s. 12): That the land with building thereon located at the Fort Hill Square Garage, in the Downtown district of the City of Boston be, and the same hereby is, transferred from the care, custody, management and control of the Real Property Department to the care, custody, management and control of the Public Facilities Department".

Yvonne Haldin
Secretary

APPROVED:

Kevin W. White
Mayor of Boston



City of Boston
Public Facilities Department

26 Court St./6th Floor
Boston, Massachusetts 02108

Donald B. Manson
Director

Victor E. Hagan
Associate Director

THE UNDERSIGNED HEREBY CERTIFIES THAT SHE is the Secretary of the Public Facilities Commission, and that at a meeting of the said Commission, duly called and held on Monday, December 12, 1983, whereat Chairman Edward T. Sullivan and Commissioner Stuart E. Marwell, being a majority of the said Commission, were present, it was voted

"In accordance with the votes of: The Real Property Board of October 21, 1983 with accompanying terms and conditions; the Boston Redevelopment Authority of October 20, 1983 with accompanying terms and conditions; the Boston City Council of November 23, 1983 which was deemed in force under St. 1948, c. 452, s. 17D, (as appearing in St. 1951, c. 376, s. 1) on December 8, 1983; and vote of this Commission dated October 21, 1983; and subject to the approval of the Mayor under St. 1909, c. 486, s. 31B (as appearing in St. 1966, c. 642, s. 12): That it is the intent of this Commission to sell the land with building thereon, including the land under the to-be-relocated High Street Ramp and the discontinued street areas, located at Fort Hill Square Garage in the Downtown district of the City of Boston and containing approximately 41,000 square feet, to the Boston Redevelopment Authority, a public body, politic and corporate, duly organized and existing pursuant to Chapter 121B of the Massachusetts General Laws, having its usual place of business at One City Hall Square, Boston, MA. 02201; and

FURTHER VOTED: That the Director be, and he hereby is, authorized and directed to execute and deliver a deed conveying said property to the Boston Redevelopment Authority in consideration of the sum of Twenty-Five Million Dollars (\$25,000,000.00) to be paid upon the conveyance by the Authority pursuant to the above referenced votes and the payment of the consideration for the conveyance to the Authority pursuant to St. 1982, c. 190, s. 24. That the foregoing is expressly subject to the terms and conditions as set forth in a document dated October 20, 1983 entitled "Terms and Conditions for Tentative Developer Designation, Fort Hill Square Garage Parcel", and filed in the Document Book of the Boston Redevelopment Authority; and



City of Boston
Public Facilities Department

26 Court St./6th Floor
Boston, Massachusetts 02108

Donald B. Manson
Director

Victor E. Hagan
Associate Director

FURTHER VOTED: Pursuant to St. 1966, c. 642, s. 3 (ii), that the Boston Redevelopment Authority be, and hereby is, authorized and empowered by the Public Facilities Commission to take all actions deemed necessary and appropriate for the disposition of the Fort Hill Square Garage in accordance with the votes described above, and the provisions of the Sale and Construction Agreement to be entered into by the City of Boston, the Boston Redevelopment Authority and the proposed Grantee;

AND FURTHER VOTED: The Public Facilities Commission hereby delegates to the City of Boston Real Property Board its power in regard to the limited purposes of the maintenance and operation of the Fort Hill Square Garage, until the conveyance of the aforementioned property pursuant to the terms and conditions set out in the votes referenced above."

Jori B. Holden
Secretary

APPROVED:

Kevin H. White
Mayor of Boston

EXHIBIT E

Description of "Private Land"

"Private Land" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 54,685.7 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street two hundred eleven and 15/100 (211.15) feet;

NORTHWESTERLY by the "Property" by eight courses having distances of eighty four and 41/100 (84.41) feet, thirty and 53/100 (30.53) feet, twenty seven and 73/100 (27.73) feet, twenty eight and 56/100 (28.56) feet, twenty eight and 55/100 (28.55) feet, twenty eight and 31/100 (28.31) feet, twenty eight and 50/100 (28.50) feet, and twenty eight and 50/100 (28.50) feet;

NORTHERLY by the "Property" one hundred eight and 23/100 (108.23) feet;

NORTHEASTERLY by the "Property" forty seven and 66/100 (47.66) feet;

EASTERLY by Purchase Street one hundred forty one and 99/100 (141.99) feet;

SOUTHEASTERLY by Purchase Street two hundred thirty six and 49/100 (236.49) feet.

Such land as shown on a plan entitled "Plan of 'Project Site' showing 'Property' and 'Private Land,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 16, 1984 and drawn by Harry R. Feldman, Inc.

EXHIBIT F

Description of "Project Site,"
"Phase 1 Site" and "Phase 2 Site"

"Project Site" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 115,301 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street by two courses having distances of three hundred three and 54/100 (303.54) feet and sixty nine and 18/100 (69.18) feet;

WESTERLY by the intersection of Oliver Street and High Street thirty seven and 83/100 (37.83) feet;

NORTHERLY by High Street by three courses having distances of two hundred four and 70/100 (204.70) feet, one hundred seventy eight and 50/100 (178.50) feet, and fifty nine and 99/100 (59.99) feet;

NORTHEASTERLY by the intersection of High Street and Purchase Street sixty six and 90/100 (66.90) feet;

EASTERLY by Purchase Street by two courses having distances of two hundred seven and 61/100 (207.61) feet, and twenty six and 38/100 (26.38) feet; and

SOUTHEASTERLY by Purchase Street two hundred thirty six and 49/100 (236.49) feet.

Such land comprising the "Phase 1 Site" and "Phase 2 Site" as shown on a plan entitled "Plan of 'Project Site' showing 'Phase 1 Site' and 'Phase 2 Site,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 25, 1984 and drawn by Harry R. Feldman, Inc.

"Phase 1 Site" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts, containing 44,419 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street three hundred three and 54/100 (303.54) feet;

NORTHWESTERLY by the "Phase 2 Site" eighty six and 00/100 (86.00) feet;

NORTHEASTERLY by the "Phase 2 Site" one hundred twelve and 64/100 (112.64) feet;

NORTHERLY by the "Phase 2 Site" eighty one and 58/100 (81.58) feet;

WESTERLY by the "Phase 2 Site" fifty and 46/100 (50.46) feet;

NORTHERLY by the "Phase 2 Site" one hundred nineteen and 29/100 (119.29) feet;

EASTERLY by Purchase Street twenty six and 38/100 (26.38) feet;

SOUTHEASTERLY by Purchase Street two hundred thirty six and 49/100 (236.49) feet.

Such land as shown on a plan entitled "Plan of 'Project Site' showing 'Phase 1 Site' and 'Phase 2 Site,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 25, 1984 and drawn by Harry R. Feldman, Inc.

"Phase 2 Site" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 70,882 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street sixty nine and 18/100 (69.18) feet;

WESTERLY by the intersection of Oliver Street and High Street thirty seven and 83/100 (37.83) feet;

NORTHERLY by High Street by three courses having distances of two hundred four and 70/100 (204.70) feet, one hundred seventy eight and 50/100 (178.50) feet, and fifty nine and 99/100 (59.99) feet;

NORTHEASTERLY by the intersection of High Street and Purchase Street sixty six and 90/100 (66.90) feet;

EASTERLY by Purchase Street two hundred seven and 61/100 (207.61) feet;

SOUTHWESTERLY by the "Phase 1 Site" one hundred nineteen and 29/100 (119.29) feet;

EASTERLY by the "Phase 1 Site" fifty and 46/100 (50.46) feet;

SOUTHERLY by the "Phase 1 Site" eighty one and 58/100 (81.58) feet;

SOUTHWESTERLY by the "Phase 1 Site" one hundred twelve and 64/100 (112.64) feet;

SOUTHEASTERLY by the "Phase 1 Site" eighty six and 00/100 (86.00) feet.

Such land as shown on "Plan of 'Project Site' showing 'Phase 1 Site' and 'Phase 2 Site,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 25, 1984 and drawn by Harry R. Feldman, Inc.

EXHIBIT G

Description of "Property,"
"Parcel A" and "Parcel B"

"Property" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 60,615.3 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street one hundred sixty one and 57/100 (161.57) feet;

WESTERLY by the intersection of Oliver Street and High Street thirty seven and 83/100 (37.83) feet;

NORTHERLY by High Street by three courses having distances of two hundred four and 70/100 (204.70) feet, one hundred seventy eight and 50/100 (178.50) feet, and fifty nine and 99/100 (59.99) feet;

NORTHEASTERLY by the intersection of High Street and Purchase Street sixty six and 90/100 (66.90) feet;

EASTERLY by Purchase Street ninety two and 00/100 (92.00) feet;

SOUTHWESTERLY by the "Private Land" forty seven and 66/100 (47.66) feet;

SOUTHERLY by the "Private Land" one hundred eight and 23/100 (108.23) feet;

SOUTHEASTERLY by the "Private Land" by eight courses having distances of twenty eight and 50/100 (28.50) feet, twenty eight and 50/100 (28.50) feet, twenty eight and 31/100 (28.31) feet, twenty eight and 55/100 (28.55) feet, twenty eight and 56/100 (28.56) feet, twenty seven and 73/100 (27.73) feet, thirty and 53/100 (30.53) feet, and eighty four and 41/100 (84.41) feet.

Such land comprising "Parcel A" and "Parcel B" as shown on a plan of land entitled "Plan of 'Project Site' showing 'Property' and 'Private Land,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 16, 1984 and drawn by Harry R. Feldman, Inc.

"Parcel A" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 45,021.3 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street one hundred thirty eight and 57/100 (138.57) feet;

NORTHERLY by "Parcel B" by four courses having distances of forty five and 21/100 (45.21) feet, one hundred forty two and 50/100 (142.50) feet, one hundred sixty one and 00/100 (161.00) feet, and thirty six and 00/100 (36.00) feet;

NORTHWESTERLY by "Parcel B" thirty seven and 97/100 (37.97) feet;

NORTHEASTERLY by the intersection of High Street and Purchase Street forty four and 03/100 (44.03) feet;

EASTERLY by Purchase Street ninety two and 00/100 (92.00) feet;

SOUTHWESTERLY by the "Private Land" forty seven and 66/100 (47.66) feet;

SOUTHERLY by the "Private Land" one hundred eight and 23/100 (108.23) feet;

SOUTHEASTERLY by the "Private Land" by eight courses having distances of twenty eight and 50/100 (28.50) feet, twenty eight and 50/100 (28.50) feet, twenty eight and 31/100 (28.31) feet, twenty eight and 55/100 (28.55) feet, twenty eight and 56/100 (28.56) feet, twenty seven and 73/100 (27.73) feet, thirty and 53/100 (30.53) feet, and eighty four and 41/100 (84.41) feet.

Such land as shown on a plan entitled "Plan of 'Property' showing 'Parcel A' and 'Parcel B,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 16, 1984 and drawn by Harry R. Feldman, Inc.

"Parcel B" shall mean the parcel of land in the City of Boston, Suffolk County, Massachusetts containing 15,594 square feet, bounded as follows:

SOUTHWESTERLY by Oliver Street twenty three and 00/100 (23.00) feet;

WESTERLY by the intersection of Oliver and High Street thirty seven and 83/100 (37.83) feet;

NORTHERLY by High Street by four courses having distances of two hundred four and 70/100 (204.70) feet, one hundred seventy eight and 50/100 (178.50) feet, fifty nine and 99/100 (59.99) feet, and twenty two and 87/100 (22.87) feet;

SOUTHEASTERLY by "Parcel A" by two courses having distances of thirty seven and 97/100 (37.97) feet, and thirty six and 00/100 (36.00) feet;

SOUTHERLY by "Parcel A" one hundred sixty one and 00/100 (161.00) feet;

SOUTHEASTERLY by "Parcel A" by two courses having distances of one hundred and forty two and 50/100 (142.50) feet, and forty five and 21/100 (45.21) feet.

Such land as shown on a plan entitled "Plan of 'Property' showing 'Parcel A' and 'Parcel B,' International Place at Fort Hill Square, Boston, Massachusetts" dated May 16, 1984 and drawn by Harry R. Feldman, Inc.

CERTIFICATE REGARDING VOTE
ON DISPOSITION OF THE
FORT HILL SQUARE GARAGE

I, the Executive Secretary of the City of Boston Real Property Board, hereby certify that at a meeting of said Board which was duly called and held on October 21, 1983, at 10:00 a.m., in Room 811, Boston City Hall, a quorum of the Board being present, the votes specified below were passed, all of which appears upon the official records of the Board in my custody.

WHEREAS: On November 1, 1982, the Real Property Board voted to delegate to the Boston Redevelopment Authority through the Public Facilities Commission full authority to study and establish criteria for the disposition of certain City-owned garages including the Fort Hill Square Garage and related real estate (hereinafter the Fort Hill Garage) as well as to advertise and seek developer proposals regarding such garages.

WHEREAS: On November 16, 1982, the Public Facilities Commission voted to delegate full authority to the Boston Redevelopment Authority to carry out the vote of the Real Property Board taken on November 1, 1982, regarding the study and disposition of various City-owned garages including the Fort Hill Garage.

WHEREAS: On or about November 24, 1982, the Boston Redevelopment Authority advertised, in various newspapers, the Request for Proposals for development and disposition of the Fort Hill Garage. Included therein were design and development guidelines for the Fort Hill Garage which mandated a minimum of 660 public parking spaces to be provided by the developer to replace those presently available in the Fort Hill Garage.

WHEREAS: In December 1982, two appraisals of the Fort Hill Garage were submitted to the Real Property Department. The appraisals concluded that the fair market value of the Fort Hill Garage was \$3,150,000 according to International Appraisal Company and \$4,650,000 according to Robert J. Flanagan, M.A.I.

WHEREAS: On January 10, 1983, two development proposals were submitted to the Boston Redevelopment Authority regarding the Fort Hill Garage.

WHEREAS: After extensive review of the proposals by the Boston Redevelopment Authority staff, the Boston Redevelopment Authority Board voted on October 20, 1983, to accept the recommendation of the Director that Chiofaro Company of Boston and the Hillman Company of Pittsburgh be designated tentative developer of the Fort Hill Square Garage Parcels.

WHEREAS: The Real Property Board has reviewed the Boston Redevelopment Authority Board vote and recommendations of October 20, 1983, as well as the previously mentioned appraisals of the Fort Hill Garage.

WHEREAS: The purpose of Chapter 474 of the Acts of 1946, as amended, which is to promote the free circulation of traffic, will not be negatively affected by the disposition of the Fort Hill Garage to a private owner since the conditions of the Boston Redevelopment Authority's tentative developer designation require the replacement of at least as many public parking spaces as are presently available in the Fort Hill Garage.

WHEREAS: Disposition of the Fort Hill Garage is in the public interest because the City will no longer be required to bear the cost of capital repairs, debt service or administration of the Garage nor will the City continue to bear the loss of real estate tax revenue due to the present tax exempt status of the Garage.

WHEREAS: The Fort Hill Garage is an old mechanical elevator garage which is inefficient to operate requiring high labor costs and significant maintenance expenses effectively rendering such Garage obsolescent.

WHEREAS: The poor design of the access and egress elements to the Fort Hill Garage have negatively impacted vehicular circulation on surrounding streets.

WHEREAS: Disposition of the Fort Hill Garage will directly benefit the public as it will result in the immediate receipt of \$21,000,000 of new revenue to the City. Furthermore, the City will receive annual real estate tax revenues once the Garage is privately owned as well as substantial additional tax revenues once it is redeveloped.

WHEREAS: It is in the public interest to maintain the operation of the Fort Hill Garage by the City as a public parking facility until the time of final disposition thereof.

On motion duly made and seconded, it was:

VOTED: Pursuant to the authority vested in it by Chapter 474 of the Acts of 1946, as amended, and subject to the terms and conditions set forth herein, the Real Property Board hereby determines and declares the off-street parking facility, including the land, air rights and structures thereon, located at 90 Oliver Street and more particularly described as containing approximately Twenty-One Thousand Three Hundred and Thirty-Three (21,333) square feet, as shown on a plan marked "City of Boston, High Street, Boston Proper", September 10, 1956, George G. Hyland, Commissioner of Public Works (L-8770), subject to all easements of record and commonly known as the Fort Hill Square Garage, to be no longer required for the purposes of Chapter 474 of the Acts of 1946, as amended.

Provided further, that the Chairman shall notify the Public Facilities Commission of this vote and shall request the Commission to take all necessary action for the transfer of the Fort Hill Garage to it as surplus property by vote of the Boston City Council pursuant to Section 24 of Chapter 190 of the Acts of 1982 and any other applicable laws.

This determination is made subject to the following terms and conditions:

1. That all of the involved parties shall comply with the requirements, procedures, and conditions as voted by the Boston Redevelopment Authority Board on October 20, 1983, regarding the tentative developer designation of the Chiofaro Company of Boston and the Hillman Company of Pittsburgh as developer of the Fort Hill Garage. The aforementioned requirements, procedures and conditions are set forth in the documents entitled "Terms and Conditions for Tentative Developer Designation Fort Hill Square Garage Parcels", which documents are attached hereto and incorporated herein.
2. That the Fort Hill Garage be ultimately disposed of in accordance with the development process set forth in the aforementioned vote of the Boston Redevelopment Authority Board and all applicable laws.
3. That upon transfer of the Fort Hill Garage by the Boston City Council to the Public Facilities Commission, the Public Facilities Commission shall delegate interim care and custody of such Garage to the Real Property Department until the time for final disposition thereof.
4. That the Fort Hill Garage shall remain open and operational as a public parking facility under the care and custody of the Real Property Department until the time that ultimate disposition of such Garage is to occur.

It was also

VOTED: That the Chairman be and is hereby authorized and empowered by the Real Property Board to take all such action deemed necessary and appropriate to the disposition of the Fort Hill Garage and the related real estate in accordance with the vote of October 20, 1983, of the Boston Redevelopment Authority Board.

October 20, 1983

TERMS AND CONDITIONS FOR TENTATIVE DEVELOPER DESIGNATION
FORT HILL SQUARE GARAGE PARCELS

1. DISPOSITION PRICE

A disposition price \$21,000,000 will be paid to the City upon the conveyance of the garage parcel and underlying fee of High Street, as described in the Development and Design Guidelines for the Fort Hill Square Garage Parcel. An additional \$4,000,000 will be paid to the City upon the first to occur of either a) the relocation of the present High Street ramp by the redeveloper or the State, in either case at no cost to the City, or b) the issuance of the Certificate of Completion on the first element of the project; but, in any event, not later than December 31, 1986 or the transfer of title of the underlying fee in the ramp area to the redeveloper.

2. BUILDING HEIGHT

The maximum height of any building element for the combined public and private parcels shall not exceed 575 feet above average street grade.

3. BUILDING BULK

The maximum floor area ratio as defined in the Boston Zoning Code shall not exceed 16 on the development site.

4. USES

A minimum of 660 public parking spaces shall be provided. The ground floor must be devoted primarily to active retail uses (including restaurants). Ground floor uses shall include the proposed "Crystal Court" of at least 25,000 square feet.

5. HIGH STREET RAMP

The developer shall remove or relocate, or cause the removal or relocation of the High Street ramp subject to approval of the Authority and of the Executive Office of Transportation prior to obtaining the Certificate of Occupancy for the final phase of the project.

6. CONSTRUCTION PHASING

The developer shall submit a schedule for project construction for review and approval by the Authority within 60 days of tentative designation.

7. PUBLIC AMENITIES

The developer shall provide the proposed public amenities (referred to in the proposal as the "Crystal Court") or the major portion thereof, coincident with the opening of the first phase of office building construction, and shall complete the public amenities coincident with the completion of office building construction.

8. DESIGN REVIEW

The developer must submit for review and approval by the Authority all drawings, specifications, and samples of materials at the following three stages in the design process:

- a. Schematic Design,
- b. Design Development, and
- c. Construction documents.

The design review process will emphasize the following aspects of project architecture and planning:

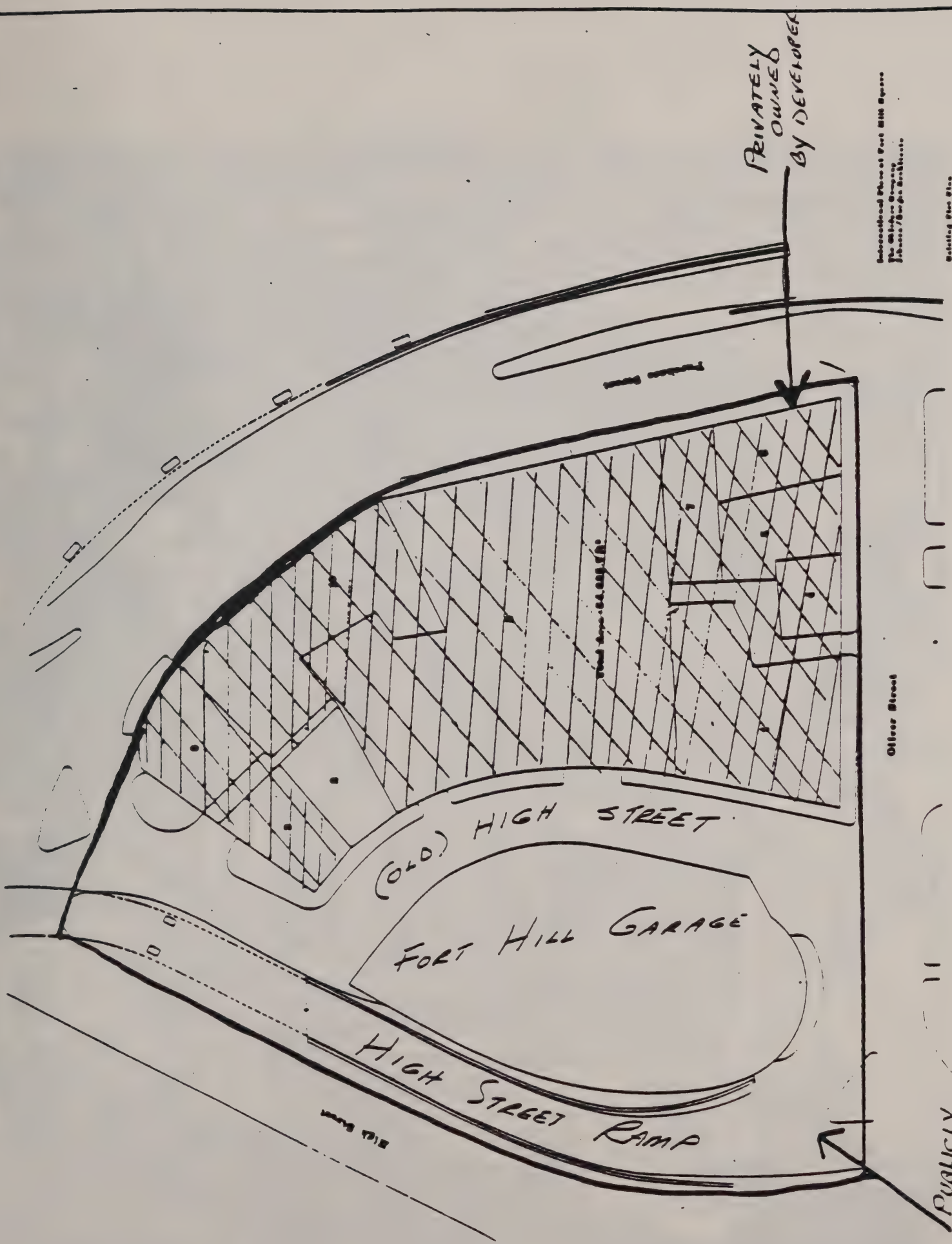
- a. Building massing and compatibility with the scale and character of the downtown Boston's waterfront, financial district, and historic Broad Street district;
- b. Building facades and detailing that will provide a distinctive project while relating strongly to Boston's architectural character;
- c. Building materials of the highest quality;
- d. A major public amenity (the "Crystal Court") that will provide a richly landscaped, weather-protected, active and lively winter-garden that will be open for public use approximately 16 hours a day;
- e. Ground-plane design that will offer entrances to the project at appropriate locations, public sidewalks of high quality paving materials, and connections to the waterfront and financial district reflecting current proposals for the reconstruction of the Central Artery.

9. LINKAGE

The developer shall comply with the linkage policies as presented in the report of the Advisory Group on Linkage Between Downtown Development and Neighborhood Housing, issued on October 14, 1983.

10. REAL ESTATE TAXES

Real estate taxes for the garage and the new development will be paid according to normal City of Boston Chapter 59 Assessing Department practices.



PRIVATELY
OWNED
BY DEVELOPER

Subcontracted Plans of Fort Hill Garage
The Office Building
Planner/Design Architect

Modeling Site Plan

Older Street

(OLD) HIGH STREET

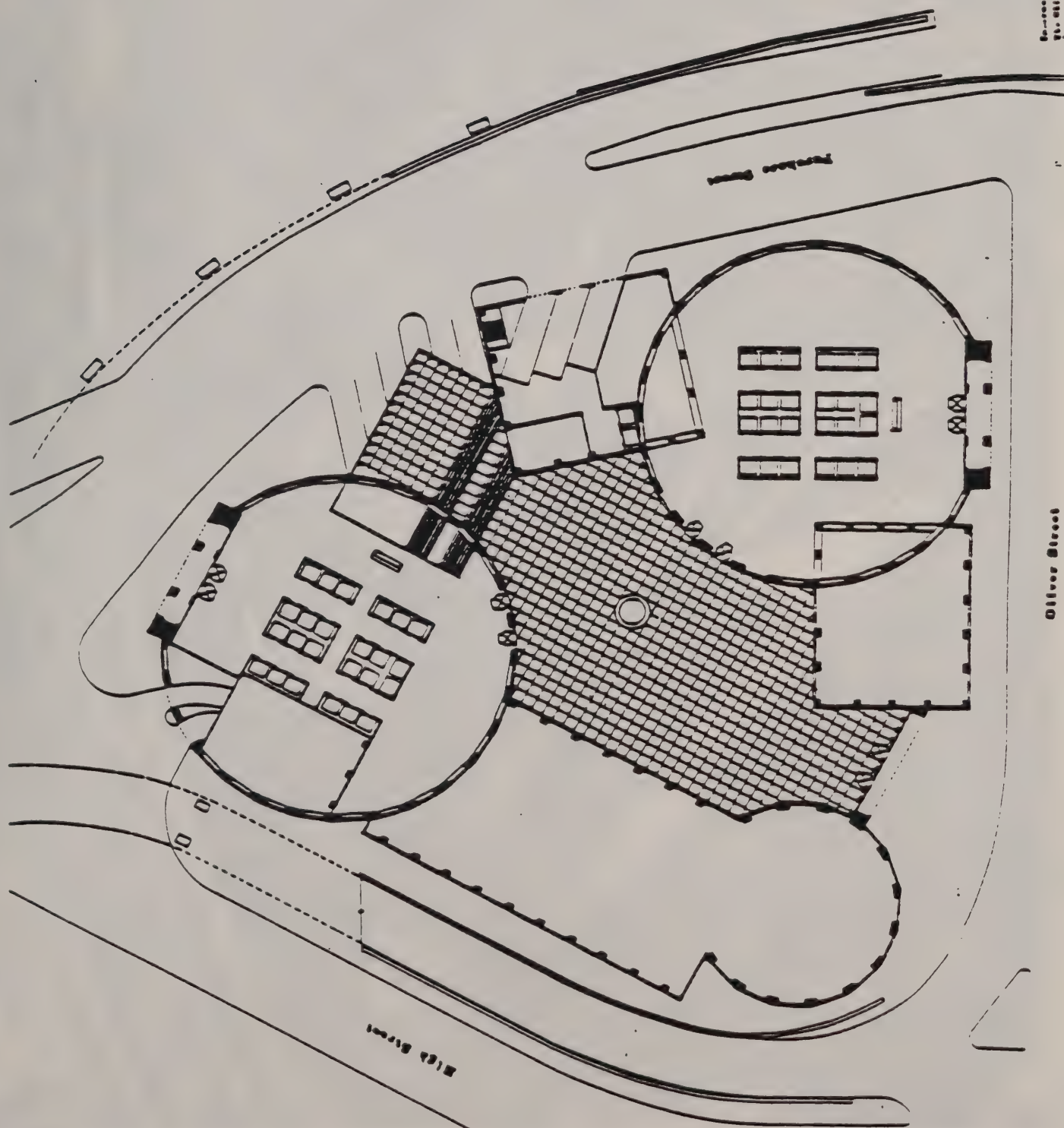
FORT HILL GARAGE

HIGH STREET RAMP

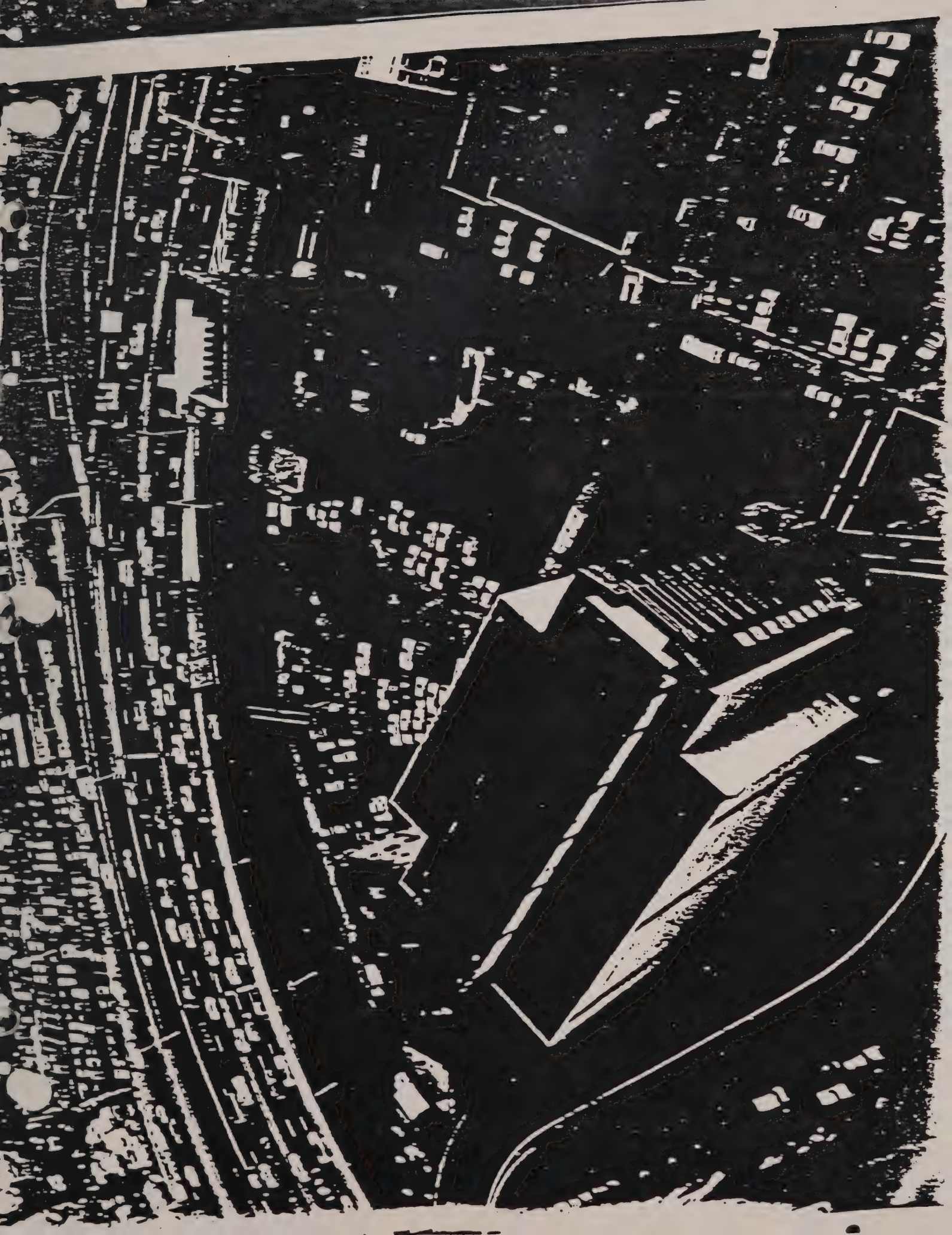
PUBLICLY
OWNED







Generalized Plan of West Mill Complex
for Oliver Company



I further certify that the vote was passed at a meeting open to the public, that notice stating the place, date and time of the meeting was filed with the City Clerk, and a copy thereof posted in the office of the City Clerk or on the principal official bulletin board of th City at least 48 hours, including Saturdays, but not Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the vote was taken in executive session, and that the official record of the meeting is available to the public, all in accordance with General Laws, Chapter 39, Section 23B, as amended, and that the vote has not been amended or revoked.

Richard Carter

Executive Secretary
Real Property Board

21 OCTOBER 1983
Date

APPROVED:

Kevin H. White

KEVIN H. WHITE, MAYOR

CERTIFICATE OF VOTE

The undersigned hereby certifies as follows:

(1) That he is the duly qualified and acting Secretary of the Boston Redevelopment Authority, hereinafter called the Authority, and the keeper of the records, including the journal of proceedings of the Authority.

(2) That the following is a true and correct copy of a vote as finally adopted at a meeting of the Authority held on October 20, 1983, and duly recorded in this office:

Copies of a memorandum dated October 20, 1983 were distributed re Fort Hill Square, Recommending to the City of Boston, Acting By and Through the Public Facilities Department, the Tentative Designation of Fort Hill Square Associates as Redeveloper of the Fort Hill Square Garage and Adjacent Public and Private Land Areas in the Financial District, attached to which were copies of a two-page document dated October 20, 1983 entitled, "Terms and Conditions for Tentative Designation Fort Hill Square Garage Parcels"; three maps of the area; two photographs; a Redeveloper's Statement for Public Disclosure; a Redeveloper's Statement of Qualifications and Financial Responsibility; and a proposed vote.

Addressing the Authority and answering the Members' questions were Messrs. Donald Chiofaro and Theodore Oatis of Fort Hill Square Associates; Messrs. Philip Johnson and John Burgee of the architectural firm of Johnson/Burgee; Mr. Lawrence Bianchi of the Codman Company; and Mr. Joseph Smith, Senior Vice President of the Bank of New England.

On motion duly made and seconded, it was

VOTED: That the Authority recommends to the City of Boston, acting by and through its Public Facilities Commission, the tentative designation of Fort Hill Square Associates, a joint venture between The Chiofaro Company of Boston and The Hillman Company of Pittsburgh, as redeveloper of the Fort Hill Square Garage facility;

said recommendation is subject to the incorporation of the terms and conditions as set forth in the document dated October 20, 1983 attached hereto entitled, "Terms and Conditions for Tentative Developer Designation Fort Hill Square Garage Parcels"; and said designation is subject to all easements of record.

Mr. McDermott voted "Nay".

The aforementioned two-page document dated October 20, 1983 entitled, "Terms and Conditions for Tentative Designation Fort Hill Square Garage Parcels" is filed in the Document Book of the Authority as Document No. 4362.

(3) That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting, and a legally sufficient number of members of the Authority voted in a proper manner and all other requirements and proceedings under law incident to the proper adoption or the passage of said vote have been duly fulfilled, carried out and otherwise observed.

(4) That the document to which this certificate is attached is in substantially the form as that presented to said meeting.

(5) That if an impression of the seal has been affixed below, it constitutes the official seal of the Boston Redevelopment Authority and this certificate is hereby executed under such official seal.

(6) That Robert J. Ryan is the Director of this Authority.

(7) That the undersigned is duly authorized to execute this certificate.

IN WITNESS WHEREOF the undersigned has hereunto set his hand this fifteenth day of February 1984.

BOSTON REDEVELOPMENT AUTHORITY

By Kenneth Simonian
Secretary

LS

October 20, 1983

TERMS AND CONDITIONS FOR TENTATIVE DEVELOPER DESIGNATION
FORT HILL SQUARE GARAGE PARCELS

1. DISPOSITION PRICE

A disposition price \$21,000,000 will be paid to the City upon the conveyance of the garage parcel and underlying fee of High Street, as described in the Development and Design Guidelines for the Fort Hill Square Garage Parcel. An additional \$4,000,000 will be paid to the City upon the first to occur of either a) the relocation of the present High Street ramp by the redeveloper or the State, in either case at no cost to the City, or b) the issuance of the Certificate of Completion on the first element of the project; but, in any event, not later than December 31, 1986 or the transfer of title of the underlying fee in the ramp area to the redeveloper.

2. BUILDING HEIGHT

The maximum height of any building element for the combined public and private parcels shall not exceed 575 feet above average street grade.

3. BUILDING BULK

The maximum floor area ratio as defined in the Boston Zoning Code shall not exceed 16 on the development site.

4. USES

A minimum of 660 public parking spaces shall be provided. The ground floor must be devoted primarily to active retail uses (including restaurants). Ground floor uses shall include the proposed "Crystal Court" of at least 25,000 square feet.

5. HIGH STREET RAMP

The developer shall remove or relocate, or cause the removal or relocation of the High Street ramp subject to approval of the Authority and of the Executive Office of Transportation prior to obtaining the Certificate of Occupancy for the final phase of the project.

6. CONSTRUCTION PHASING

The developer shall submit a schedule for project construction for review and approval by the Authority within 60 days of tentative designation.

7. PUBLIC AMENITIES

The developer shall provide the proposed public amenities (referred to in the proposal as the "Crystal Court") or the major portion thereof, coincident with the opening of the first phase of office building construction, and shall complete the public amenities coincident with the completion of office building construction.

8. DESIGN REVIEW

The developer must submit for review and approval by the Authority all drawings, specifications, and samples of materials at the following three stages in the design process:

- a. Schematic Design,
- b. Design Development, and
- c. Construction documents.

The design review process will emphasize the following aspects of project architecture and planning:

- a. Building massing and compatibility with the scale and character of the downtown Boston's waterfront, financial district, and historic Broad Street district;
- b. Building facades and detailing that will provide a distinctive project while relating strongly to Boston's architectural character;
- c. Building materials of the highest quality;
- d. A major public amenity (the "Crystal Court") that will provide a richly landscaped, weather-protected, active and lively winter-garden that will be open for public use approximately 16 hours a day;
- e. Ground-plane design that will offer entrances to the project at appropriate locations, public sidewalks of high quality paving materials, and connections to the waterfront and financial district reflecting current proposals for the reconstruction of the Central Artery.

9. LINKAGE

The developer shall comply with the linkage policies as presented in the report of the Advisory Group on Linkage Between Downtown Development and Neighborhood Housing, issued on October 14, 1983.

10. REAL ESTATE TAXES

Real estate taxes for the garage and the new development will be paid according to normal City of Boston Chapter 59 Assessing Department practices.

Boston Redevelopment Authority

Robert J. Ryan/Director

April 5, 1984

Mr. Donald Chiofaro
The Chiofaro Company
One Post Office Square
Boston, MA 02109

Dear Mr. Chiofaro:

My staff and I have reviewed the International Place Schematic Design Submission dated March 19, 1984 which included site plans, floor plans, sections and elevations, and the additional plans and written descriptions dated April 2, 1984 and April 4, 1984. We have also discussed the submission with the Boston Society of Architects' Design Assistance Team on March 28, 1984.

The design of this project has been significantly improved over the original proposal, and responds to most of the concerns raised during the design review. I am pleased therefore to approve the schematic design with the exception of the following items:

1. The High Street and Oliver Street mid-rise elements as they relate to the Battery~~March~~ corridor and entrance pavilion are not approved. Additional materials may be requested to address the Authority's concerns on this issue.
2. The Phase 2 building program and design approval is contingent on the removal of the High Street ramp. If the ramp is not removed prior to Phase 2, we require a pro rata reduction in total building area for the overall project based on the available unencumbered site area, namely the site area minus the land area under the ramp times the approved FAR of 16. This revised Phase 2 building will also be subject to the Authority's full design review process.
3. Several aspects of the Phase 1 park design, such as asphalt paving and lack of granite edges along the paths are not approved. All trees shall be a minimum 6" caliper. Revised site plan and landscaping details must be submitted within the next thirty (30) days.

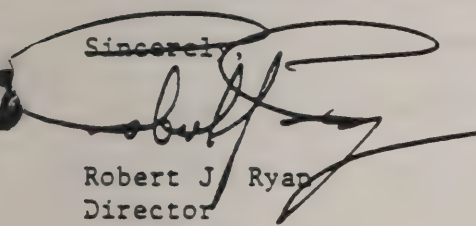
1 City Hall Square
Boston, Massachusetts 02201
(617) 722-4300

4. Approval of the building footprint is contingent on all sidewalks being a minimum 15' from building to curb line for both Phase 1 and Phase 2.
5. The lack of off-site pedestrian improvements such as the connection to Rows/Foster's Wharf and the Oliver/High Street intersection is not approved. I expect these to be satisfactorily defined during the design development stage.

The approval of schematic drawings, as outlined in Attachment A, is conditioned on the satisfactory completion of all the conditions of your tentative designation and, in particular, the requirement to provide a minimum of 660 public parking spaces in in your overall project, with a minimum of 402 public parking spaces in the Phase I development. A satisfactory detailed plan for location and design of the 402 public parking spaces must be submitted to the Authority for its approval within the next thirty (30) days. A copy of this letter must be submitted to the City of Boston Inspectional Services Department with your building permit application to be incorporated into their approval as outstanding public conditions to be resolved.

I am very pleased with your progress to date and compliment the Chiofaro Company and John Burgee Architects with Philip Johnson for the exciting and attractive schematic design. I urge you to maintain the high standards of quality expressed in this submission as the design review progress continues.

Sincerely,



Robert J. Ryan
Director

Attachment

EXHIBIT A

International Place at Fort Hill Square
Schedule of Drawings

	<u>Drawing Date</u>
1. Dwg. #1. Site Plan	4/3/84
2. Dwg. #2. Ground Floor Plan	4/3/84
3. Dwg. #3. Second Floor Plan	4/3/84
4. Dwg. #4. Fourth through Eleventh Floor Plan	4/3/84
5. Dwg. #6. Forty- Fifth & Forty-Sixth Floor Plan	4/3/84
6. Dwg. #7. Building Elevations	4/3/84
7. Dwg. #8. Building Elevation	4/3/84
8. Dwg. #11. Phase One Sections	4/3/84
9. Dwg. #12. Phase Two Section	4/3/84
10. Plot Plan w/Zoning Information	4/4/84
11. Survey Plan	3/2/84
12. Phase One Ground Floor Plan (with park)	4/3/84
13. Phase One Ground Floor Plan (with park and High Street ramp removed)	4/3/84

[BRA Letterhead]

Mr. Donald Chiofaro
The Chiofaro Company, Inc.
One Post Office Square
Boston, Massachusetts 02109

Dear Mr. Chiofaro:

My staff and I have reviewed the International Place Schematic Design Submission dated March 19, 1984, which included site plans, floor plans, sections and elevations, and the additional plans and written descriptions dated April 2, 1984 and April 4, 1984. The Schematic Design was approved by letter dated April 5, 1984 subject to certain outstanding public conditions to be resolved.

On the basis of recent discussions between your development team and the staff of the Authority, Item 2 of the April 5, 1984 letter is hereby revised to the extent that land area located under the High Street ramp will not (subject to your taking title to same under the Sale and Construction Agreement to be entered into by Fort Hill Square Associates, the City, and the Authority) be deducted from the area of the project site for purposes of computing the approved FAR of 16. However, approval of the Phase II building program and design remains contingent on removal of the High Street ramp. If the ramp is not removed prior to construction of Phase II, a revised design for the Phase II building must be submitted for review and approval pursuant to the Authority's full design review process. In the event that revision of the Phase II design is required, the Authority may seek, in the course of its review and approval, to reconfigure the massing of the Phase II building components while maintaining insofar as possible the public amenities and floor area of such phase as planned. You have acknowledged that the foregoing process could result in a reduction of floor area with the result that the FAR for the entire Project would be less than the approved FAR of 16.

Sincerely,

Robert J. Ryan
Director

EXHIBIT K

Ownership Interests in Developer

Fort Hill Square Associates ("FHSA") is a Massachusetts partnership whose general partners are BC Associates, an affiliate of The Chiofaro Company, Inc., and Fort Hill Land Company, an affiliate of The Hillman Company.

BC Associates, a Massachusetts Limited Partnership, holds a 40% interest in FHSA (subject to adjustment under certain circumstances). Donald J. Chiofaro is the Managing General Partner of BC Associates, and holds a majority interest therein. The sole other General Partner of BC Associates is Theodore A. Oatis.

Fort Hill Land Company, a Delaware corporation, holds a 60% interest in FHSA (subject to adjustment under certain circumstances). Fort Hill Land Company is a wholly-owned subsidiary of Hillman Coal & Coke Company, which is in turn a wholly-owned subsidiary of The Hillman Company.

The address of FHSA, BC Associates and The Chiofaro Company, Inc. is One Post Office Square, Boston, Massachusetts 02109. The address of Hillman Coal & Coke Company and The Hillman Company is 1900 Grant Building, Pittsburgh, Pennsylvania 15219. The address of Fort Hill Land Company is 1006 Wilmington Trust Center, Rodney Square North, Wilmington Delaware 19801.

AGREEMENT

AGREEMENT made this _____ day of _____, 1984 by and between the Boston Redevelopment Authority ("BRA"), acting for and on behalf of the City of Boston and the Neighborhood Housing Trust hereafter to be created, and Fort Hill Square Associates, a Massachusetts limited partnership. As used herein "FHSA" shall mean Fort Hill Square Associates, its successors, assigns, and legal representatives.

WITNESSETH THAT:

WHEREAS, FHSA proposes to construct a mixed-use development project including office and retail uses and a below grade parking facility substantially in accordance with schematic design plans approved by the BRA on April 5, 1984 (the "Project") to be located on two lots with addresses at 150 Oliver Street ("Lot 1") and 90 Oliver Street ("Lot 2"), Ward 3, City Proper;

WHEREAS, the project site includes the Fort Hill Square Garage site and related land including discontinued street areas presently owned by the City of Boston;

WHEREAS, the City of Boston has tentatively designated FHSA as redeveloper of the Fort Hill Square Garage site and related land and has empowered the BRA, acting on behalf of the City of Boston, to convey the Fort Hill Garage site and related land to FHSA pursuant to votes by the BRA on October 20, 1983, the Real Property Board on October 21, 1983, the Public Facilities Commission on October 21, 1983, the City Council on November 23, 1983, and the Public Facilities Commission on December 12, 1983;

WHEREAS, the terms and conditions of FHSA's tentative designation as redeveloper provide that the Project shall comply with the "linkage" policies of the City of Boston;

WHEREAS, the linkage policies of the City have been incorporated in Article 26 of the Boston Zoning Code by Text Amendment No. 73, which became effective on December 29, 1983;

WHEREAS, FHSA has petitioned the Board of Appeal of the City of Boston for conditional use permits and variances under the Boston Zoning Code (the "Zoning Code") to permit construction of the Project; and

WHEREAS, the Neighborhood Housing Trust referred to in said Article 26 of the Zoning Code, as amended, has not yet been created.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. FHSA will cause the Project Site to be developed in accordance with the Schematic Design approved by the Authority (subject to certain outstanding public conditions to be resolved) by letter dated April 5, 1984, as supplemented, and in accordance with the terms of a Sale and Construction Agreement to be entered into by FHSA, the Authority, and the City.

2. FHSA shall be responsible, in accordance with the terms of this Agreement, for a Development Impact Project Exaction, as such term is presently defined in Section 26-2(3) of the Zoning Code, in the amounts set forth in Section 3 of this Agreement. FHSA may satisfy its obligation for the Development Impact Project Exaction, in whole or in part, by payment in accordance with

Section 5 of this Agreement, or by contributing to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston in accordance with Section 6 of this Agreement.

3. The Development Impact Project Exaction shall be paid separately for the improvements to be located on Lot 1 and Lot 2. The Development Impact Project Exaction for the improvements to be constructed on Lot 1 shall be Five Million Sixty Six Thousand Five Hundred and Fifteen (\$5,066,515) Dollars. The Development Impact Project Exaction for the improvements to be construed on Lot 2 shall be Three Million One Hundred and Fifty Seven Thousand Four Hundred and Sixty (\$3,157,460) Dollars.

4. Payment of the amounts set forth in Section 3 of this Agreement shall commence upon the earlier of the issuance of a Certificate of Occupancy or twenty-four months after the granting of a Building Permit with respect to the improvements subject to such Certificate or Permit. In the event that a Building Permit is not granted for any part of the improvements, or in the event that construction of any part of the improvements is abandoned prior to the commencement of substantial construction after a Building Permit is obtained, then FHSA shall have no responsibility for any Development Impact Project Exaction with respect to such improvements. Demolition and surface site work shall not be considered substantial construction, but the commencement of excavation, foundation and other sub-surface work shall constitute substantial construction.

5. If FHSA shall elect to satisfy the responsibility for the Development Impact Project Exaction by money payments, then the Development Impact Project Exaction shall be paid to the City of Boston acting by and through the Neighborhood Housing Trust, or if such Trust has not been created then to the BRA, in twelve equal annual payments, the first payment to be due and payable on the date described in Section 4 and with subsequent payments due on the anniversary dates, all payments to be made where and otherwise as instructed by the BRA.

6. If FHSA shall elect to contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston, FHSA shall submit a proposal in writing to the BRA on or before the date described in Section 4 describing the number, location, cost and design of the housing units. The proposal shall be subject to approval by the BRA after public notice and hearing.

7. Any payments made by FHSA pursuant to Section 5, and the cost of any contribution to the creation of housing units by FHSA pursuant to Section 6, shall be credited against any amounts due to the Neighborhood Housing Trust on account of any neighborhood impact excise which may be assessed by the City of Boston.

8. The BRA agrees that FHSA, and its successors in interest, shall be liable only for breaches of obligations under this Agreement while FHSA or any successor in interest, as the case may be, is owner of the Project. The BRA further agrees to look solely to the interest in the Project of FHSA, or its successors, as the case may be, for any claim against FHSA or any successor

arising under this Agreement. Neither FHSA nor any trustee, beneficiary, partner, manager, agent or employee of FHSA (or its successors and assigns) shall ever be personally or individually liable; nor shall it or they ever be answerable or liable in any equitable proceeding or order beyond the extent of its or their interest in the Project.

9. This Agreement shall be construed under Massachusetts law, sets forth the entire Agreement among the parties, may be amended or modified only by a writing signed by all parties, and is binding upon and inures to the benefit of the parties and their successors, assigns and legal representatives.

FORT HILL SQUARE ASSOCIATES

By: BC ASSOCIATES
Managing Partner

By: _____
Donald J. Chiofaro
Managing General Partner

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Director

Approved as to Form:

Chief General Counsel
Boston Redevelopment Authority